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Report of the International Criminal Court

Report of the International Criminal Court

Note by the Secretary-General

The report of the International Criminal Court on its activities for 2010/11 is submitted herewith to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court and paragraph 17 of General Assembly resolution 65/12.

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Report of the International Criminal Court to the United Nations for 2010/11

Summary

The present report, covering the period 1 August 2010 to 31 July 2011, is the seventh annual report of the International Criminal Court submitted to the United Nations. It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations.

The Court made significant progress during the reporting period. Five new States acceded to or ratified the Rome Statute of the International Criminal Court, bringing the total number of States parties to 116. The Court's judicial activity reached a new high with the start of a third trial. The presentation of evidence in the Court's first trial was concluded, and the verdict is expected by the end of the year.

The Prosecutor opened a sixth investigation, following the Security Council's unanimous referral of the situation in the Libyan Arab Jamahiriya. The total number of individuals subject to proceedings before the Court increased from 15 to 25, and seven new persons appeared before the judges pursuant to an arrest warrant or a summons to appear.

The United Nations continued to provide important support and assistance to the Court during the reporting period. The Court engaged closely with States, the United Nations and regional and intergovernmental organizations to enhance international cooperation in the fight against impunity for genocide, crimes against humanity and war crimes.

As the importance attached to the Court's work and the relevance of the Rome Statute on the international scene grow, great challenges remain. Arrest warrants are outstanding against a total of 11 suspects, and the cooperation of States in bringing these persons to justice continues to be a key condition for the effective implementation of the Court's mandate. At the same time, the growing casework and the referral of a new situation by the Security Council has increased pressure on the resources available to the Court.

The Court is seized of seven situations, of which the situation in Côte d'Ivoire is pending the Pre-Trial Chamber's authorization for the opening of an investigation. The situations in Uganda, the Democratic Republic of the Congo and the Central African Republic were referred by the States in question, and the situations in Darfur, Sudan, and the Libyan Arab Jamahiriya were referred by the United Nations Security Council. In each case, the Prosecutor decided that there was a reasonable basis for the opening of investigations. The investigation into the situation in Kenya was authorized by Pre-Trial Chamber III following a request from the Prosecutor.

In respect of the situation in Uganda, there is one case, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, with four warrants of arrest outstanding since July 2005.

In respect of the situation in the Democratic Republic of the Congo, there are four cases, of which two are at the trial stage. In *The Prosecutor v. Thomas Lubanga Dyilo*, the presentation of evidence has concluded and a verdict is expected by the end of the year. In *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, the prosecution case finished in December 2010 and the first accused began presenting his case on 21 March 2011. In *The Prosecutor v. Callixte Mbarushimana*, an arrest warrant was issued and the suspect arrested during the reporting period. The case is at the pre-trial stage. In *The Prosecutor v. Bosco Ntaganda*, the arrest warrant has remained outstanding since August 2006.

In respect of the situation in the Central African Republic, there is one case, *The Prosecutor v. Jean-Pierre Bemba Gombo*. The trial started on 22 November 2010 with the presentation of prosecution evidence.

In respect of the situation in Darfur, Sudan, there are three active cases. In *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, on 7 March 2011 Pre-Trial Chamber I confirmed charges of war crimes in connection with an attack on an African Union mission, sending the case to trial. Arrest warrants remain outstanding in *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*, as well as in *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.

In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his twelfth and thirteenth reports on the status of the investigation into the situation in Darfur to the Council on 9 December 2010 and 8 June 2011, respectively, highlighting the lack of cooperation by the Sudanese Government, the continuation of the alleged crimes on the ground and the need to execute the outstanding arrest warrants.

In respect of the situation in Kenya, there are two ongoing cases at the pre-trial stage, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. All six suspects appeared before Pre-Trial Chamber II in April 2011 pursuant to summonses to appear, and the confirmation of charges hearings are scheduled for September 2011.

In respect of the situation in the Libyan Arab Jamahiriya, there is one ongoing case, *The Prosecutor v. Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi*. On 27 June 2011, Pre-Trial Chamber I issued warrants of arrest against the three suspects for crimes against humanity allegedly committed since 15 February 2011. In accordance with Security Council resolution 1970 (2011), the Prosecutor presented his first report on the status of the investigation into the situation in the Libyan Arab Jamahiriya on 4 May 2011.

In addition to the six investigations, the Office of the Prosecutor is conducting preliminary examinations in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea, Honduras, Nigeria, the Republic of Korea and Palestine. During the reporting period, the Prosecutor sought authorization from the Pre-Trial Chamber to open an investigation into the alleged crimes committed on the territory of Côte d'Ivoire after 28 November 2010. The request was pending at the time of the submission of the present report.

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I. Introduction

1. The present report, covering the period 1 August 2010 to 31 July 2011, is the seventh annual report of the International Criminal Court submitted to the United Nations in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court.[1] It covers the main developments in the activities of the Court and other items relevant to the relationship between the Court and the United Nations since the sixth report of the Court to the United Nations (A/65/313).

2. The Court was created by an international treaty, the Rome Statute of the International Criminal Court,[2] which was adopted on 17 July 1998 and entered into force on 1 July 2002. During the reporting period, Grenada, the Republic of Moldova, Saint Lucia, Seychelles, and Tunisia deposited instruments of ratification or accession, resulting in 116 States having ratified or acceded to the Rome Statute. These include 32 African States, 15 Asian States, 18 Eastern European States, 26 States from Latin America and the Caribbean and 25 Western European and other States. In addition to these States parties, 34 countries have signed but not yet ratified the Rome Statute.

3. The Court is an independent judicial institution, charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern, namely, genocide, crimes against humanity and war crimes.

4. The Rome Statute requires that proceedings before the Court be carried out fairly and impartially, with full respect for the rights of the accused. An innovative aspect of the Rome Statute is that victims may participate in proceedings, even if not called as witnesses.

5. In carrying out its functions, the Court relies on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation from States include preliminary examinations, investigations, the arrest and surrender of accused persons, asset tracking and freezing, victim and witness protection, provisional release, the enforcement of sentences and the execution of the Court's decisions and orders.

6. The Court is independent from, but has close historical, legal and operational ties to, the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute as well as by the Relationship Agreement between the Court and the United Nations and other subsidiary agreements.

II. Judicial proceedings

7. During the reporting period, the Court continued to be seized of the five situations already opened: the situations in Uganda; the Democratic Republic of the Congo; the Central African Republic; Darfur, Sudan; and Kenya.

[1] United Nations, *Treaty Series*, vol. 2283, No. 1272.

[2] Ibid., vol. 2187, No. 38544.

8. In March 2011, the Prosecutor opened a sixth investigation, into the situation in the Libyan Arab Jamahiriya, following a unanimous referral by the Security Council pursuant to resolution 1970 (2011), adopted on 26 February 2011. The Prosecutor also requested authorization from the Pre-Trial Chamber to open a seventh investigation, into the situation in Côte d'Ivoire.

9. Judicial proceedings have taken place in relation to each of the six investigations, resulting in 13 cases involving 26 individuals alleged to have committed crimes within the jurisdiction of the Court. Of these 26 individuals, one was officially declared dead and the proceedings against him were terminated. The cases in which there have been judicial developments during the reporting period are detailed below.

A. *The Prosecutor v. Thomas Lubanga Dyilo* (situation in the Democratic Republic of the Congo)

10. Thomas Lubanga Dyilo is alleged to be the leader of the Union des patriotes congolais and Commander-in-Chief of its military wing, the Forces patriotiques pour la libération du Congo. He is charged with having committed war crimes in the Democratic Republic of the Congo, specifically enlisting, conscripting and using children under the age of 15 years to participate actively in hostilities.

11. The trial of Mr. Lubanga started on 26 January 2009 before Trial Chamber I. The Prosecution called 29 witnesses between 26 January 2009 and 14 July 2009. Additional prosecution witnesses were subsequently called or recalled in 2010 to respond to the abuse of process allegations made by the defence. The defence case was presented in the period from 27 January 2010 to 18 April 2011. During this period, the defence tendered 133 items of evidence and called 24 witnesses to testify over a total of 68 trial days. A total of 118 victims have participated, through their legal representatives, in the Lubanga case. Three of the victims authorized to participate in the proceedings testified before the Chamber in January 2010.

12. On 8 October 2010, the Appeals Chamber reversed the decisions of Trial Chamber I to stay the proceedings and to release the accused. The Trial Chamber had previously ordered a stay of the proceedings as a consequence of the prosecution's material non-compliance with the Chamber's orders and had ordered the unrestricted and unconditional release of Thomas Lubanga Dyilo, subject to the appeal and an order of suspensive effect by the Appeals Chamber, on 15 July 2010. The Appeals Chamber reversed the Trial Chamber's decision, finding that before ordering a stay of proceedings, the Trial Chamber should have first imposed sanctions under article 71 of the Statute to bring about compliance.

13. On 23 February 2011, Trial Chamber I refused the defence application to stay the proceedings as an abuse of the process. The trial resumed on 21 March 2011.

14. On 20 May 2011, Trial Chamber I ordered the closing of the presentation of evidence stage. The prosecution and the defence submitted their closing briefs on 1 June and 15 July, respectively. The parties and participants will present their closing oral statements in public hearings on 25 and 26 August 2011.

B. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (situation in the Democratic Republic of the Congo)

15. Germain Katanga and Mathieu Ngudjolo Chui are two former leaders of armed groups active in the Ituri region of the Democratic Republic of the Congo. Mr. Katanga allegedly commanded the Forces de résistance patriotiques en Ituri and had been appointed Brigadier General of the Forces armées de la République démocratique du Congo (FARDC); Mr. Ngudjolo was allegedly the former leader of the Front des nationalistes et intégrationnistes and a Colonel in FARDC. They are both charged with seven counts of war crimes (wilful killing, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging and destroying the enemy's property) and three charges of crimes against humanity (murder, sexual slavery and rape). These crimes were allegedly committed in connection with the attack on the village of Bogoro on 24 February 2003.

16. The trial of Mr. Katanga and Mr. Ngudjolo started on 24 November 2009 before Trial Chamber II. The prosecution concluded its presentation of live evidence in the case on 8 December 2010. During its case, the prosecution presented 270 pieces of evidence and called 24 witnesses, including 2 expert witnesses, to testify.

17. The first defendant, Mr. Katanga, presented his case between 24 March 2011 and 12 July 2011 and called 17 witnesses to testify, including 3 witnesses in common with the second accused, Mr. Ngudjolo. In all, 150 items tendered by the defence of Mr. Katanga and 59 items submitted by the defence of Mr. Ngudjolo were admitted as evidence. The defence case of Mr. Ngudjolo is scheduled to commence on 15 August 2011. A total of 366 victims are participating through their legal representatives, 2 having testified at trial.

C. *The Prosecutor v. Callixte Mbarushimana* (situation in the Democratic Republic of the Congo)

18. Callixte Mbarushimana is the alleged Executive Secretary of the Forces démocratiques de libération du Rwanda (FDLR). Pre-Trial Chamber I issued a warrant of arrest on 28 September 2010, finding reasonable grounds to believe that he personally and intentionally contributed to a common plan of the FDLR leadership to launch an offensive targeting the civilian population of the Kivus in order to obtain political concessions, as part of an international campaign to extort concessions of political power for FDLR.

19. On 11 October 2010, after the arrest of Mr. Mbarushimana by French authorities, the warrant of arrest was unsealed. He was transferred to the Court's Detention Centre in The Hague on 25 January 2011 and his initial appearance before the Court took place on 28 January 2011. The confirmation of charges hearing, initially scheduled for 4 July 2011, was postponed at the request of the prosecution in view of delays caused by technical difficulties encountered in reviewing electronic devices seized at the premises of the suspect.

20. On 15 July 2010, the prosecution filed the document containing the charges and list of evidence. The charges contain 13 counts of war crimes and crimes against humanity allegedly committed in the provinces of North and South Kivu and eastern Democratic Republic of the Congo in the period from 20 January to 31 December

2009. The prosecution argues that Mr. Mbarushimana is responsible for contributing to the FDLR leaders' common purpose to commit crimes by creating a "humanitarian catastrophe" in the Kivus in order to persuade the Governments of Rwanda and the Democratic Republic of the Congo to abandon their military campaign against the group and to extort concessions of political power in Rwanda.

D. *The Prosecutor v. Jean-Pierre Bemba Gombo* (situation in the Central African Republic)

21. Jean-Pierre Bemba Gombo was formerly President and Commander-in-Chief of the Mouvement de libération du Congo. He allegedly committed crimes in various locations in the Central African Republic in connection with a non-international armed conflict that took place from 26 October 2002 to 15 March 2003. Charges against Mr. Bemba were confirmed by Pre-Trial Chamber III on 15 June 2009. He is charged with three counts of war crimes (murder, rape and pillaging) and two counts of crimes against humanity (murder and rape) in his capacity as a military commander under article 28 of the Rome Statute (Responsibility of commanders and other superiors).

22. On 19 October 2010, the Appeals Chamber delivered its judgement on the appeal of Mr. Bemba against the 24 June 2010 decision of Trial Chamber III entitled "Decision on the admissibility and abuse of process challenges". The Appeals Chamber confirmed the challenged decision, finding that when a Trial Chamber is presented with the question of whether the outcome of domestic judicial proceedings is equivalent to a decision not to prosecute in terms of article 17, paragraph (1) (b), of the Statute, the Trial Chamber should accept prima facie the validity and effect of the decisions of domestic courts, unless presented with compelling evidence indicating otherwise.

23. The trial of Mr. Bemba started on 22 November 2010 before Trial Chamber III. To date, 1,619 victims have been admitted to participate in the trial proceedings through their legal representatives. As at 31 July 2011, the prosecution had presented 25 of its 40 planned witnesses.

E. *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (situation in Darfur, Sudan)

24. A first warrant of arrest against Omar Hassan Ahmad Al Bashir, current President of the Sudan, was delivered on 4 March 2009 by Pre-Trial Chamber I for five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (attacking civilians and pillaging). On 12 July 2010, Pre-Trial Chamber I issued a second warrant of arrest which charged Mr. Al Bashir with three additional counts of genocide. Both warrants of arrest were notified to all States parties, to the authorities of the Sudan and to all Security Council members that are not parties to the Rome Statute.

25. On 27 August 2010, Pre-Trial Chamber I issued two decisions informing the Security Council and the Assembly of States Parties to the Rome Statute of Mr. Al Bashir's visits to Kenya and Chad, in order for them to take any action they may deem appropriate. On 12 May 2011, Pre-Trial Chamber I issued a similar decision

with respect to Mr. Al Bashir's visit to Djibouti. In the aforementioned decisions, Pre-Trial Chamber I noted that the States in question have an obligation to cooperate with the Court, stemming both from Security Council resolution 1593 (2005) and from article 87 of the Rome Statute, to which Chad, Djibouti and Kenya are States parties.

26. Mr. Al Bashir remains at large. A total of 12 victims have been admitted to participate in this case through their legal representatives.

F. *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (situation in Darfur, Sudan)

27. Abdallah Banda Abakaer Nourain is alleged to be the Commander-in-Chief of the Justice and Equality Movement and Mohammed Jerbo Jamus is alleged to be the former Chief-of-Staff of the Sudan Liberation Army-Unity. Mr. Banda and Mr. Jerbo were issued summonses to appear in August 2009 by Pre-Trial Chamber I.

28. The confirmation of charges hearing was held on 8 December 2010. On 7 March 2011, Pre-Trial Chamber I confirmed three charges of war crimes (violence to life, intentionally directing attacks against a peacekeeping mission and pillaging) against the alleged rebel leaders in the situation in Darfur, Sudan, in relation to an attack on peacekeepers in an African Union mission in Northern Darfur, Sudan (the African Union Mission in the Sudan (AMIS)), on 29 September 2007.

29. On 16 March 2011, the Presidency of the Court referred the case to the newly constituted Trial Chamber IV. On 16 May 2011, the parties filed a joint submission stating that the accused would contest only certain specified issues at their trial:

(a) Whether the attack on the Haskanita military group site on 29 September 2007 was unlawful;

(b) If the attack was deemed unlawful, whether the accused were aware of the factual circumstances that established the unlawful nature of the attack;

(c) Whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations.

30. The agreement reached by the parties could significantly shorten the trial proceedings by focusing the trial on only those issues that are contested between the parties, thus promoting an efficient and cost-effective trial while preserving the rights of victims to participate in the proceedings and protecting the rights of the accused persons to a fair and expeditious trial.

31. As at 31 May 2011, a total of 89 victims had been authorized to participate through their legal representatives in the proceedings. The date of the commencement of trial will be set in due course.

G. *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (situation in Kenya)

32. On 8 March 2011, Pre-Trial Chamber II issued summonses to appear for William Samoei Ruto, a suspended Minister of Higher Education, Science and Technology, Henry Kiprono Kosgey, a member of Parliament and Chairman of the

Orange Democratic Movement (ODM), and Joshua Arap Sang, the head of operations at Kass FM in Nairobi, for their alleged roles in committing crimes against humanity in connection with the post-election violence of 2007 and 2008. All three accused are allegedly members of ODM, one of the two political parties of Kenya's ruling coalition.

33. On 7 April 2011, the three suspects voluntarily appeared before Pre-Trial Chamber II. The confirmation of charges hearing is scheduled for 1 September 2011, when Pre-Trial Chamber II will consider the charges, namely, three counts of crimes against humanity (murder, forcible transfer of population and persecution).

34. On 31 March 2011, the Government of Kenya filed an application pursuant to article 19 of the Rome Statute challenging the admissibility of the case before the Court. Pre-Trial Chamber II rejected the application on 30 May 2011, considering that the application did not provide concrete evidence of ongoing national proceedings with respect to the persons subject of the proceedings at the Court. The Government's appeal against the decision is pending before the Appeals Chamber.

H. *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (situation in Kenya)

35. On 8 March 2011, Pre-Trial Chamber II issued summonses to appear for Francis Kirimi Muthaura, Head of Public Service and Secretary to the Cabinet, Uhuru Muigai Kenyatta, Deputy Prime Minister and Minister for Finance, and Mohammed Hussein Ali, Chief Executive of the Postal Corporation, for their alleged roles in committing crimes against humanity in connection with the post-election violence of 2007 and 2008. All three accused are allegedly members of the Party of National Unity, one of the two political parties of Kenya's ruling coalition.

36. On 8 April 2011, the three suspects voluntarily appeared before Pre-Trial Chamber II. The confirmation of charges hearing is scheduled for 21 September 2011, when Pre-Trial Chamber II will consider the charges of five counts of crimes against humanity (murder, forcible transfer of population, rape, persecution and other inhumane acts).

37. On 31 March 2011, the Government of Kenya filed an application pursuant to article 19 of the Rome Statute challenging the admissibility of the case before the Court. Pre-Trial Chamber II rejected the application on 30 May 2011, considering that the application did not provide concrete evidence of ongoing national proceedings with respect to the persons subject of the proceedings at the Court. The Government's appeal against the decision is pending before the Appeals Chamber.

I. *Prosecutor v. Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (situation in the Libyan Arab Jamahiriya)

38. On 27 June 2011, Pre-Trial Chamber I issued warrants of arrest against Libyan leader Muammar Mohammed Abu Minyar Gaddafi, his son Saif Al-Islam Gaddafi, Libyan Government Spokesman, and Abdullah Al-Senussi, Director of Military Intelligence, for two counts of crimes against humanity (murder and persecution) allegedly committed since 15 February 2011. Pre-Trial Chamber I found that there

were reasonable grounds to believe that Muammar Gaddafi, in coordination with his inner circle, conceived and orchestrated a plan to deter and quell, by all means, civilian demonstrations against the regime. The warrants of arrest follow the investigation into the situation in the Libyan Arab Jamahiriya, opened by the Prosecutor on 3 March 2011 pursuant to Security Council resolution 1970 (2011), adopted on 26 February 2011, by which the Council referred the situation to the Prosecutor.

J. Outstanding warrants of arrest

39. At the time of submission of the present report, 12 warrants of arrest were outstanding:

(a) Uganda: Mr. Joseph Kony, Mr. Vincent Otti, Mr. Okot Odhiambo and Mr. Dominic Ongwen, outstanding since 2005;

(b) Democratic Republic of the Congo: Mr. Bosco Ntaganda, outstanding since 2006;

(c) Darfur, Sudan: Mr. Ahmad Harun and Mr. Ali Kushayb, outstanding since 2007 and, in the case of Mr. Omar Al Bashir, two warrants outstanding since 2009 and 2010;

(d) Libyan Arab Jamahiriya: Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, outstanding since 27 June 2011.

40. The Court issued requests for cooperation in the arrest and surrender of each of these individuals and notified these requests to the relevant States. States parties and other States that have legal obligations to cooperate with the Court are required to comply with these requests. In respect of the situations in Darfur, Sudan, and the Libyan Arab Jamahiriya, all parties, including the respective States, are obliged to cooperate fully with the Court and the Prosecutor pursuant to Security Council resolutions 1593 (2005) and 1970 (2011), respectively.

III. Investigations and preliminary examinations

A. Investigations

1. Situation in the Democratic Republic of the Congo

The Prosecutor v. Thomas Lubanga Dyilo and The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

41. During the period 1 August 2010 to 31 July 2011, the prosecution conducted 16 missions to five countries mainly for the support of trials, to address the arguments raised by the defence in *The Prosecutor v. Thomas Lubanga Dyilo* and in *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

The case of the Kivu provinces

42. During the period from 1 August 2010 to 31 July 2011, the Office of the Prosecutor conducted 34 missions to 10 countries for its third investigation in the Democratic Republic of the Congo, focusing on crimes committed by the FDLR

militia in the Kivu provinces, which led to the arrest and surrender of Callixte Mbarushimana and supported the preparation for the upcoming confirmation of charges hearing.

43. The investigation and prosecution of crimes allegedly committed by the FDLR militia in the Kivu provinces in eastern Democratic Republic of the Congo represent one of the most successful examples of complementarity under the Rome Statute system. Part of the FDLR leadership was based in Europe. Callixte Mbarushimana, the militia's alleged Executive Secretary, was based in France. He was arrested by French authorities and surrendered to the Court. Ignace Murwanashiyaka and Straton Musoni, FDLR President and Vice-President, respectively, were arrested by German authorities on 17 November 2009 and are currently facing trial in Germany for war crimes and crimes against humanity charged under the German Code of Crimes against International Law.

44. The prosecution of the FDLR leadership is the result of more than two years of investigations conducted by Germany, Rwanda, the Democratic Republic of the Congo, France and the Office of the Prosecutor into the alleged crimes in the Kivus and specifically into the activities of FDLR.

45. The investigation of the Office of the Prosecutor into alleged crimes committed in the Kivus continues, including against other leaders of FDLR.

46. As part of its policy of positive complementarity, which actively encourages genuine national proceedings, the Office has furthermore contributed to the training of Congolese judicial authorities in North and South Kivu provinces investigating war crimes and crimes against humanity, in October 2010 and February 2011, respectively.

2. Situation in Uganda

47. The Office of the Prosecutor continued to gather information on crimes allegedly committed by the Lord's Resistance Army (LRA) and to promote action to implement warrants against the top LRA leadership, carrying out three missions to three countries in relation to the situation in Uganda. The Office has collected a range of information on crimes allegedly being committed by LRA under Joseph Kony's leadership. According to the information received, LRA crimes continued to be committed throughout the year, with a substantial number of killings and abductions across the Democratic Republic of the Congo, Southern Sudan and the Central African Republic. Since early 2008, the LRA is reported to have killed more than 2,000, abducted more than 2,500 and displaced well over 300,000 in the Democratic Republic of the Congo alone. During the same period, more than 120,000 people have been displaced, at least 450 killed and more than 800 abducted in Southern Sudan and the Central African Republic.

48. The Office also continued gathering and analysing information related to alleged crimes committed by the Uganda People's Defence Forces. The Office continued to encourage Ugandan authorities to conduct proceedings in relation to both parties to the conflict.

49. As part of its policy of positive complementarity, the Office has provided assistance to Ugandan authorities to investigate and prosecute individuals. As national authorities prepared for their first domestic war crimes case before the newly established International Crimes Division of the High Court, against an

alleged mid-level LRA commander, the Office shared lessons learned and best practices, including with regard to witness protection and support and evidence-handling. The Office was able to provide searchable copies, translations and transcripts of the raw material originally received from Ugandan authorities in the context of the Office's own enquiries that related to the incidents selected for prosecution in the High Court of Uganda. The Office received a formal undertaking from Ugandan authorities that any information shared by the Office will be used in the context of proceedings that are consistent with internationally recognized human rights standards.

3. Situation in the Central African Republic

50. The Office of the Prosecutor continued its investigation into the situation in the Central African Republic and conducted a total of 14 missions to five countries between 1 August 2010 and 31 July 2011 for the purposes of, inter alia, screening potential witnesses and following up on new information received.

4. Situation in Darfur, Sudan

51. In the period from 1 August 2010 and 30 July 2011, the Office conducted 16 missions to nine countries in relation to investigations into the situation in Darfur.

52. In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his twelfth and thirteenth reports on the status of the investigation into the situation in Darfur to the Security Council, on 10 December 2010 and 8 June 2011, respectively.

53. In his briefing of 10 December 2010, the Prosecutor drew attention to the issuance by the Pre-Trial Chamber of a second arrest warrant against President Al Bashir on three charges of genocide. He again highlighted the lack of cooperation by the Government of the Sudan and the lack of national proceedings against those responsible for the crimes committed.

54. In his briefing of 8 June 2011, the Prosecutor addressed the outstanding arrest warrants and ongoing crimes, expressing particular concern about the role of Ahmad Harun as a key player.

55. The Office continues to monitor and gather information regarding the situation in Darfur, Sudan. The information collected indicates that crimes against humanity, war crimes and genocide continue to be committed.

5. Situation in Kenya

56. Following the authorization to commence an investigation, the Office conducted 71 missions to 14 countries during the reporting period.

57. The Prosecutor submitted two applications for summonses to appear regarding six individuals on 15 December 2010.

6. Situation in the Libyan Arab Jamahiriya

58. Following the unanimous Security Council referral, the Office conducted a factual and legal analysis during its preliminary examination of the situation. As a result of this analysis, covering issues of jurisdiction, admissibility

(complementarity and gravity) and the interests of justice, on 3 March 2011 the Office determined that the statutory criteria for opening an investigation into the situation in the Libyan Arab Jamahiriya had been met.

59. In his briefing to the Security Council on 4 May 2011, the Prosecutor gave his first report on the substantial and swift progress made in the Office's investigations, concluding that he would in the coming weeks be seeking arrest warrants against three individuals who appeared to bear the greatest criminal responsibility for crimes against humanity committed in the Libyan Arab Jamahiriya since 15 February.

60. Subsequently, on 16 May 2011, the Prosecutor requested that Pre-Trial Chamber I issue arrest warrants against Libyan leader Muammar Mohammed Abu Minyar Gaddafi, his son Saif Al-Islam Gaddafi, Libyan Government Spokesman, and Abdullah Al-Senussi, Director of Military Intelligence. In this application the Prosecutor produced evidence, relating to orders issued by Muammar Gaddafi, of Saif Al-Islam organizing the recruitment of foreign soldiers, and of Al-Senussi participating in attacks against demonstrators, in addition to documenting how the three had held meetings to plan the operations.

61. During the reporting period, the Office conducted 28 missions to 11 countries with regard to the situation in the Libyan Arab Jamahiriya. The Office is investigating allegations of rape, sexual violence and other instances of crimes against humanity, including torture and inhuman acts committed against civilians perceived as dissidents. The Office is also investigating allegations of attacks against sub-Saharan Africans wrongly perceived to be mercenaries and allegations of war crimes committed by different parties during the armed conflict.

B. Preliminary examinations

62. The Office continued to proactively monitor information on crimes potentially falling within the jurisdiction of the Court, analysing communications received from various sources. As at 30 June 2011, the Office had received 9,253 communications relating to article 15 of the Rome Statute, of which 419 were received during the reporting period.

63. The Office continued preliminary examinations in Afghanistan, Colombia, Georgia, Guinea and Palestine. The Office made public the fact that it had initiated preliminary examinations of situations in Honduras, Nigeria and the Republic of Korea. On 23 June 2011, the Prosecutor requested authorization from the Pre-Trial Chamber to commence an investigation into the situation in Côte d'Ivoire.

1. Afghanistan

64. The Office continued to monitor the situation in Afghanistan, considering all information, including open sources. It maintains close contact with experts, civil society organizations and public officials in the region, and participated in various international academic conferences on Afghanistan.

65. In accordance with the Rome Statute, the Office assesses whether there are genuine investigations and proceedings consistent with an intent to bring to justice those bearing the greatest responsibility for the most serious crimes committed in Afghanistan. This analysis covers investigations and proceedings that may be

carried out in the State of nationality of those allegedly responsible or any other State having jurisdiction over alleged crimes committed in Afghanistan.

2. Colombia

66. Upon ratification of the Rome Statute, Colombia declared (according to article 124 of the Rome Statute) that it would not accept the Court's jurisdiction with respect to war crimes for seven years. That seven-year period ended on 1 November 2009. War crimes committed after that date could be investigated and prosecuted by the Office of the Prosecutor. Colombia's national criminal justice system has made efforts to investigate those responsible for crimes covered by the Rome Statute.

67. The Office is monitoring and analysing information on investigations and proceedings, focusing on those dealing with the leadership of paramilitary and guerrilla groups and the military allegedly responsible for conduct that may fall under the Court's jurisdiction. The Office is analysing allegations of international support networks assisting armed groups committing crimes within Colombia. The Office is also monitoring the cases of "parapolitica".

68. Letters requesting information have been sent by the Office to various States. During the reporting period, the Office also met with Colombian stakeholders from the Government, judicial authorities and non-governmental organizations (NGOs), in both Colombia and The Hague.

69. At the biannual NGO round table on 20 October 2010, the Office held a session on complementarity in the context of the preliminary examination in Colombia, at which panellists commented on the response of Colombian authorities to fighting impunity, with a focus on Justice and Peace Law proceedings.

70. The Office will continue to examine the situation and national proceedings in Colombia. In this context, in accordance with its positive approach to complementarity, the Office has welcomed the efforts of President Santos in seeking further international support for the Colombian national proceedings and in promoting cooperation, as explained during the ninth session of the Assembly of States Parties in December 2010. The appointment of Spanish Judge Baltasar Garzón, who has worked as a consultant for the Office, as adviser to the Mission to Support the Peace Process in Colombia of the Organization of American States, is an example of positive complementarity in practice and will, it is to be hoped, contribute to helping the Colombian authorities to move in a positive direction.

3. Côte d'Ivoire

71. The Office continued to monitor the situation in Côte d'Ivoire, in particular the violence following the presidential run-off election held on 28 November 2010.

72. On 18 December 2010, the Court received a declaration signed by President Ouattara which confirmed the previous declaration, submitted in October 2003 by the Government of Côte d'Ivoire pursuant to article 12, paragraph 3, of the Statute, accepting the jurisdiction of the Court for crimes committed on the country's territory since 19 September 2002.

73. The Prosecutor has concluded that the statutory criteria established by the Rome Statute for the opening of an investigation have been met. On 23 June 2011, the Prosecutor requested authorization from the Pre-Trial Chamber to open an

investigation into the alleged crimes committed on the territory of Côte d'Ivoire since 28 November 2010.

4. Georgia

74. During the reporting period, the Office of the Prosecutor has continued to follow up on investigations into alleged crimes committed during the August 2008 conflict in Georgia.

75. In February 2011, a delegation from the Office of the Prosecutor led a second visit to the Russian Federation and received a comprehensive update on the progress of national investigations undertaken by the investigative committee of the Russian Federation. The Office has maintained regular contacts with the Georgian authorities.

76. The Office maintains close contacts with NGOs in the region, receiving reports from and participating in meetings with these organizations.

5. Guinea

77. The Prosecutor announced on 14 October 2009 that the situation in Guinea was under preliminary examination, relating to allegations surrounding the events of 28 September 2009 in Conakry.

78. The Office conducted two missions to Guinea to follow up on investigations being carried out by Guinean judges into the 2009 events, and to monitor whether new crimes were committed during the election period, as part of the Office's preventive mandate. The Office met with Government officials and representatives of the judiciary and civil society, as well as victims and victims' associations.

6. Honduras

79. On 18 November 2010, the Prosecutor announced that the situation in Honduras was under preliminary examination. The Office is analysing whether alleged human rights violations following the 28 June 2009 coup d'etat against President Zelaya constitute crimes under the jurisdiction of the Court. The Office received 17 communications regarding the situation. Honduran authorities immediately offered their cooperation.

7. Republic of Korea

80. On 6 December 2010, the Office announced the receipt of communications alleging that forces of the Democratic People's Republic of Korea had committed war crimes in the territory of the Republic of Korea.

81. The preliminary examination of the situation in the Republic of Korea is focusing on two incidents: (a) the shelling of Yeonpyeong Island on 23 November 2010, which resulted in the killing of marines and civilians of the Republic of Korea and injury to many others; and (b) the sinking of a Republic of Korea warship, the *Cheonan*, which was hit by a torpedo allegedly fired from a submarine of the Democratic People's Republic of Korea on 26 March 2010, which resulted in the deaths of 46 persons.

82. The Office has been seeking additional information from relevant sources. The Office is engaged with the Korean authorities on determining factual issues as part of the subject-matter jurisdiction analysis of the preliminary examination.

8. Nigeria

83. The Office of the Prosecutor made its examination of the situation in Nigeria public on 18 November 2010. The Office is analysing alleged crimes committed in Central Nigeria since mid-2004 and has engaged constructively with the Nigerian authorities. The Office met with Nigerian and international civil society organizations which work in the "middle belt" states. Nigerian judicial authorities have been invited to share information with the Office on existing proceedings.

9. Palestine

84. In connection with the declaration lodged by the Palestinian National Authority under article 12, paragraph 3, of the Rome Statute on 22 January 2009 accepting the jurisdiction of the Court, the Office continues to examine whether the declaration meets statutory requirements. As the International Criminal Court is a court of last resort, the Office of the Prosecutor also considers whether there are national proceedings in relation to alleged crimes, relating to the admissibility of the cases potentially arising from the situation. In total, the Office received 400 communications on crimes allegedly committed in Palestine.

85. The Palestinian National Authority requested the right to be heard on the fulfilment of the statutory requirements for opening an investigation, including on the issue as to whether Palestine qualifies as a "State" for the purpose of article 12, paragraph 3, of the Statute. The Office considered that a fair process required that the Palestinian National Authority as well as other interested parties have the opportunity to be heard. The Office therefore ensured due process to all parties involved. Representatives of the Palestinian National Authority presented arguments by oral and written submissions. The final public briefing will be presented soon.[3]

86. The Office has also considered various public reports and organized an interactive discussion among the various experts and NGOs that had provided submissions at the seat of the Court during its biannual round table on 20 October 2010.

87. In July 2011, the Office provided updated information to the Office of the United Nations High Commissioner for Human Rights pursuant to its request on steps taken by the Office of the Prosecutor with regard to the Palestinian declaration.

88. The Prosecutor met with various stakeholders, including representatives of the Palestinian National Authority, the secretariat of the League of Arab States and a number of Palestinian and Israeli NGOs to discuss the jurisdiction of the Court.

[3] The Office of the Prosecutor has made available on its website a first summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements.

IV. International cooperation

A. Cooperation with the United Nations

89. Cooperation between the Court and the United Nations is based on the Relationship Agreement signed between the two organizations on 4 October 2004. Pursuant to article 10 of the Relationship Agreement, the United Nations provided facilities and services for the ninth session of the Assembly of States Parties, held at United Nations Headquarters, New York, from 6 to 10 December 2010. The tenth session is due to take place at United Nations Headquarters from 12 to 21 December 2011.

90. In the area of security, the Court is a member of the United Nations security management system and is invited to participate in the United Nations Inter-Agency Security Management Network meetings twice a year. This allows the Court to align its standards, regulations and operations with the United Nations and other member organizations in the field.

91. In situation countries, the support and assistance received by the Court from the United Nations is of crucial importance, ranging from the provision of fuel for the Court's vehicles to the use of United Nations air assets. During the reporting period the Court made use of 862 flights operated by the United Nations in support of missions in all situation countries. The United Nations continues to provide a range of services and facilities to the Court, including logistical support for the Court's field operations.

92. The Court has extensive contact with the Office of Legal Affairs, particularly in coordinating the testimony of United Nations officials, the provision of information and the mainstreaming of the Court throughout the United Nations system. The United Nations provided documents to the Prosecutor and defence counsel upon their request. In December 2010, the second United Nations official to testify before the Court gave evidence in the trial of Germain Katanga and Mathieu Ngudjolo Chui.

93. The Court appreciates the cooperation and assistance received from the Office of Internal Oversight Services (OIOS) of the United Nations Secretariat. On 16 July 2010, the Court and the United Nations signed a memorandum of understanding in order to facilitate the secondment of an expert from OIOS to act as the temporary head of the Independent Oversight Mechanism of the International Criminal Court until 18 July 2011. Similarly, the Court benefited from the assistance provided by experts from the Internal Audit Division of OIOS who, in April 2011, conducted an assurance mapping study of the current internal and external oversight mechanisms of the Court.

94. On 13 June 2011, the Registry concluded a memorandum of understanding with the United Nations concerning the provision of support services and facilities by the United Nations Office at Nairobi to the Registry of the Court in connection with its activities in Kenya.

95. On 14 and 15 June 2011, senior representatives of the Office of the Prosecutor participated in meetings in New York with United Nations Offices, including the Office of Legal Affairs, the Department of Peacekeeping Operations, the United Nations Development Programme, the Office for the Coordination of Humanitarian

Affairs and the Office of the United Nations High Commissioner for Refugees, focusing on, inter alia, updates on recent developments relating to the activities of the Office, cooperation, exchange of information and best practices.

96. The next round table coordination meeting between the United Nations and the Court has been scheduled for 8 and 9 December 2011 in New York.

97. Regular contact between the International Criminal Court and United Nations Headquarters has been instrumental in facilitating cooperation. The Court's New York Liaison Office is the primary interlocutor for the United Nations Secretariat. The New York Liaison Office continued to facilitate and promote cooperation between the Court and the United Nations and its funds, programmes and agencies, as well as between the Court and Permanent and Observer Missions to the United Nations.

98. The head of the New York Liaison Office participated as an observer at meetings of the Security Council and, pursuant to article 4 of the Relationship Agreement, in General Assembly meetings concerning the work of the Court. The Liaison Office facilitated visits of senior Court officials to their counterparts in New York, followed developments of relevance to the Court in various United Nations meetings and updated Court officials accordingly. It also constantly updated the United Nations Secretariat and Permanent Missions on judicial developments within the Court and transmitted judicial notifications from the Court to the Secretary-General and the Security Council. As the work of the Court continued to gain prominence at the United Nations, the head of the Liaison Office was increasingly called upon to provide information to various United Nations departments and Permanent Missions.

99. In addition to operational and logistical assistance, the public and diplomatic support of the United Nations and its senior officials, including the Secretary-General, continued to be important to the Court.

100. The President of the Court held several meetings with senior United Nations officials during the reporting period, with a particular focus on the possibilities for the Rule of Law Coordination and Resource Group to reinforce engagement on issues relating to crimes covered by the Rome Statute. In their meeting on 9 December 2010, the President and the Secretary-General discussed the potential for the United Nations to play a key role in the strengthening of national justice systems by increasing focus on Rome Statute issues within rule-of-law programming and development aid. They also agreed on the importance of raising awareness globally about the Court and promoting the ratification of the Rome Statute, particularly in regions underrepresented among the States parties. On 17 March 2011, the President met with the Administrator of the United Nations Development Programme and discussed the synergies between the United Nations and the Court in supporting the domestic capacity of States to prosecute serious crimes. On 9 May 2011, the President of the Court met with the United Nations High Commissioner for Human Rights and discussed various forms of cooperation between the two organizations in ensuring accountability for Rome Statute crimes. The President also met with the heads of United Nations missions in several countries during his official travels to discuss issues of mutual interest.

101. As indicated above, the Prosecutor briefed the Security Council on two occasions on the status of the investigation into the situation in Darfur and on one

occasion on the status of the investigation into the situation in the Libyan Arab Jamahiriya. In addition, during the reporting period the Office of the Prosecutor held various high-level meetings with representatives of the United Nations in order to increase understanding of its specific mission and increase mutual cooperation. The meetings included the Under-Secretary-General for Political Affairs, the Under-Secretary-General for Peacekeeping Operations, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, the United Nations High Commissioner for Human Rights and the Special Representative of the Secretary-General on Sexual Violence in Conflict, as well representatives of the Office for the Coordination of Humanitarian Affairs.

B. Cooperation with and assistance from States, other international organizations and civil society

102. The Court made numerous requests to States for cooperation or assistance pursuant to part IX of the Rome Statute. Pursuant to article 87 of the Statute, the content of such requests and related communications is often confidential in nature.

103. During the reporting period, the Office of the Prosecutor sent 211 requests for assistance to States parties, non-States parties, international and regional organizations and others. While many of these requests are still pending, in particular the recent ones, the execution rate at the end of the reporting period already stood at 70 per cent.

104. In addition to specific requests for cooperation and assistance made pursuant to parts IX and X of the Rome Statute, the Court continued to develop bilateral exchanges and arrangements for cooperation with States, especially with respect to analysis and investigative activities, asset tracking and freezing, victim and witness protection, arrest operations, the enforcement of sentences and the provisional release of accused persons pending trial.

105. During the reporting period, agreements on the enforcement of sentences were concluded with Colombia and Serbia, bringing to seven the total number of such agreements. This is welcome, as the possibility of sentences being handed down in 2011 and 2012 has increased the need for the Court to find suitable detention places for sentenced persons.

106. No new witness relocation agreements were entered into with States during the reporting period, although advanced negotiations are ongoing with a number of States in this respect. In order to increase the Court's options for relocating witnesses internationally, the Court opened a new special fund for witness relocation for States to donate funds for the purposes of funding relocations to third States. The Court has already received a substantial donation to the special fund, currently used to finance several witnesses relocations. The Court is now approaching States parties to enquire about their willingness to enter into a cost-neutral witness relocation agreement with the Court, financed by the special fund.

107. In addition, States parties may support, bilaterally or through multilateral institutions, the establishment of witness protection capabilities in other States where capacity is lacking. A number of countries have already indicated their keen interest in this proposal, the development of which would further the principle of complementarity.

108. The Trust Fund for Victims, established by the Rome Statute, has a dual mandate in respect of victims with the jurisdiction of the Court. The secretariat of the Trust Fund regularly interacts and coordinates with States and United Nations organizations at the institutional and operational levels.

109. The mandate of the Trust Fund for Victims related to the implementation of Court-ordered reparations is expected to be triggered by a first conviction by the Court. Activities under the Fund's rehabilitation mandate have been under way in northern Uganda and the Democratic Republic of the Congo for the past four years, and it is anticipated that they will start in the Central African Republic early in 2012. The Chair of the Board of the Fund, Ms. Elisabeth Rehn, contributes on a regular basis to international forums, which have included the League of Arab States conference held in Doha in May 2011.

110. During the reporting period, the Court concluded a framework cooperation arrangement with the Organization of American States and a memorandum of understanding on cooperation with the Commonwealth Secretariat. These agreements are highly valuable in enhancing the Court's cooperation with intergovernmental organizations with a view to exchanging information, raising awareness and supporting the capacity-building of national jurisdictions in accordance with the principle of complementarity.

111. The Court increased its cooperation and engagement with the League of Arab States. On 24 and 25 May 2011 in Doha, Court representatives, high-level Government delegations, legal experts and media representatives attended a regional conference on the International Criminal Court, organized by Qatar and the League of Arab States in cooperation with the Court. The conference was the first major event of its kind in the Middle East aimed at providing information on the workings of the Court and its legal framework. Speakers included the President, Registrar and Prosecutor of the Court, as well as leading Arab experts on international criminal justice.

112. The Court continued to communicate closely with the African Union. On 18 and 19 July 2011 at African Union headquarters in Addis Ababa, Court officials and more than 50 participants representing 15 African States participated in a seminar on the technical aspects of the Rome Statute and Court practice, jointly organized by the African Union and the Court. Presentations on the Court's structure and governing principles, including complementarity, were followed by candid discussions about the role of the Court within the international justice system, the relationship between regional and international organizations and the relationship between peace and justice. The Court acknowledges the financial support of the International Organization of la Francophonie for this and other regional seminars held during the reporting period.

113. The Court welcomes the adoption by the European Union of Council Decision 2011/168/CFSP of 21 March 2011, replacing the Union's previous Common Position on the Court. The European Union continued to provide valuable technical, financial and other forms of support to the Court during the reporting period.

114. Senior officials of the Court met frequently with representatives of States, international organizations and civil society to update them on the work of the Court, to raise awareness about the Rome Statute system and to discuss issues of mutual interest. The President of the Court met, inter alia, the Heads of State or

Government of Colombia, Ireland, Malaysia, Mongolia, the Philippines and Qatar, as well as with ministers of foreign affairs and justice of numerous States from all regions. Furthermore, the President of the Court met with the President of the European Union, the Chairman of the Commission of the African Union and the Secretaries-General of the Commonwealth and the Organization of American States.

115. The Office of the Prosecutor paid official visits to various Heads of State and Government, including the Presidents of Botswana, Guinea and Sierra Leone, the President and the Prime Minister of Côte d'Ivoire and the Emir and the Prime Minister of Qatar. The Office also met with the Prime Minister of the Libyan Transitional National Council, the Ministers for Foreign Affairs of Denmark, Egypt, the Netherlands, Senegal and Spain and the Ministers of Justice of Egypt, Liberia, Senegal, South Africa and Palestine, among others. In addition, the Office met with high-level representatives of international and regional organizations, including the League of Arab States, the African Union, the European Union (the European External Action Service and the European Parliament), the Organization of American States and the International Organization of la Francophonie.

116. The Court held two diplomatic briefings in The Hague in order to update the diplomatic community on the work of the Court. Briefings for diplomatic missions were also held in New York. Two strategic-level meetings were held between the Court and civil society organizations in The Hague, in addition to regular contacts between the Court and representatives of civil society.

V. Institutional developments

A. Elections and appointments

117. At its tenth session, to be held from 12 to 21 December 2011 at United Nations Headquarters, the Assembly of States Parties will elect six new judges to replace the six judges whose nine-year terms will expire on 10 March 2012. The terms of office of the new judges will begin on 11 March 2012.

118. The Assembly will also elect a Prosecutor to replace the current Prosecutor, whose term ends in June 2012. At the ninth session of the Assembly, in December 2010, the Bureau of the Assembly established a search committee for the position of Prosecutor[4] with a mandate to facilitate the nomination and election, by consensus, of the next Prosecutor.[5] The committee began its work early in 2011 and has informally received expressions of interest from various sources, including individuals, States and civil society. It is reviewing the expressions of interest in the light of the relevant criteria, and will produce a shortlist of at least three suitable candidates, if possible, for consideration by the Bureau.

119. On 27 May 2011, the Prosecutor announced the appointment of Professor Mireille Delmas-Marty as his Office's Special Adviser on the Internationalization of Legal Issues. On 19 July 2011, Professor Renwen Liu was appointed as Special Adviser to the Prosecutor on the Chinese legal system. These appointments are in accordance with the duty of the Prosecutor established by article 42, paragraph 9, of

[4] See "Bureau of the Assembly of States Parties: Search Committee for the position of the Prosecutor of the International Criminal Court: terms of reference" (ICC-ASP/9/INF.2).

[5] Ibid., para. 5.

the Statute to appoint advisers with legal expertise on specific issues. Juan Mendez, Special Adviser on Crime Prevention, resigned from his position as a consequence of his appointment as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

B. Assistance to the Special Court for Sierra Leone

120. During the reporting period, the International Criminal Court continued to provide detention services and other related assistance to the Special Court for Sierra Leone in its trial of Charles Taylor in The Hague. The assistance provided to the Special Court for Sierra Leone includes access to the information and communications technology facilities of the International Criminal Court, its vault and a fully equipped office connected to the detention centre for the defence team. The Court agreed to provide these services to the Special Court for Sierra Leone through an exchange of letters detailing the relevant services.

VI. Conclusion

121. The Court was busier during the reporting period than ever before, with the number of suspects or accused persons increasing from 15 to 25. A third trial started before the Court, presentation of evidence was concluded in one trial, charges were confirmed against two accused and seven new persons appeared before the judges pursuant to an arrest warrant or a summons to appear. The Prosecutor opened a sixth investigation and requested authorization of the Pre-Trial Chamber to open a seventh investigation.

122. Five new States acceded to or ratified the Rome Statute, bringing the total number of States parties to 116. The United Nations continued to provide important support and assistance to the Court. Enhancing the complementarity of the Court and national jurisdictions is a crucial task in the global struggle against impunity, and the United Nations and its specialized agencies play a major role in this respect, in cooperation with the Court and other relevant actors.

123. As the importance attached to the Court's work and the relevance of the Rome Statute on the international scene grow, great challenges remain. The increased casework, and the referral of a new situation by the Security Council, has added pressure on the resources available to the Court. Arrest warrants are outstanding against a total of 11 suspects and the cooperation of States in bringing these persons to justice continues to be a key condition for the effective implementation of the Court's mandate.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, submitted in accordance with Assembly resolution 65/221 and Human Rights Council resolution 15/15.

* A/66/150.

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Summary

The present report is the first submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Assembly resolution 65/221 and Human Rights Council resolution 15/15. A brief introduction (sect. I) is followed by a description of the activities of the former and present Special Rapporteurs (sects. II and III).

The present Special Rapporteur shares several initial thoughts reflecting his interpretation of his mandate and how he intends to discharge it (sect. IV) and highlights some conclusions and recommendations (sect. V). He identifies two substantive areas of interest falling within that mandate — namely, the rights of victims of terrorism, and the prevention of terrorism — where, during the period of his tenure, he wishes to pursue the further development of efforts; and provides a concise discussion on how he would like to utilize some of the tools available to him in the discharge of his mandate, such as future country visits and cooperation with Governments and all pertinent actors, including relevant United Nations bodies.

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I. Introduction

1. The present report is the first report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Assembly resolution 65/221 and Human Rights Council resolution 15/15. The report provides several initial thoughts of the present Special Rapporteur reflecting his interpretation of the mandate and how he intends to discharge it.

2. On 17 June 2011, Mr. Ben Emmerson was appointed Special Rapporteur on the promotion and protection of human rights while countering terrorism by the Human Rights Council at its seventeenth session and took office on 1 August 2011. The Council, in its resolution 15/15 of 7 October 2010, had decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for a period of three years.

3. A report on the work of the former Special Rapporteur, Martin Scheinin, undertaken since the submission of his last report to the Human Rights Council (sect. II), is followed by a description of the activities of the present Special Rapporteur (sect. III). In section IV, the present Special Rapporteur presents a preliminary discussion of his areas of interest in respect of the discharge of his mandate and in section V offers some conclusions and recommendations.

II. Activities of the former Special Rapporteur

4. The former Special Rapporteur took part in a regional expert symposium on securing the principles of a fair trial for persons accused of terrorist offences, held in Bangkok, on 17 and 18 February 2011, which was organized by the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism. The Task Force is chaired by the Office of the United Nations High Commissioner for Human Rights.

5. The former Special Rapporteur presented his annual report (A/HRC/16/51) to the Human Rights Council at its sixteenth session, on 7 March 2011. The report contained a compilation of 10 areas of best practices in countering terrorism. The compilation was the outcome of an analysis undertaken on the basis of his work conducted over almost six years which involved various forms of interaction with multiple stakeholders. The written submissions of Governments in response to a questionnaire of the Office of the High Commissioner related to the annual report of the Special Rapporteur were reproduced in full in an addendum to that report (A/HRC/16/51/Add.4). He also held an interactive dialogue with the Council on his report containing communications to and from Governments (from 1 January to 31 December 2011) (A/HRC/16/51/Add.1) and his reports on his missions to Tunisia (A/HRC/16/51/Add.2) and Peru (A/HCR/16/51/Add.3 and Corr.1).

6. On 11 March 2011, the former Special Rapporteur participated as a panellist in a discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking, pursuant to Human Rights Council decision 15/116 of 1 October 2010.

7. The former Special Rapporteur also participated as speaker in two side events, on progress towards a world court for human rights and on the operational

dimensions of human rights compliance in the prevention of terrorism, on 8 and 11 March 2011, respectively.

8. During the period from 3 to 11 March 2011, the former Special Rapporteur held meetings in Geneva with the Ambassadors of Burkina Faso, Djibouti, Mexico, Peru, the Philippines, Thailand and Tunisia, and with representatives of the Permanent Missions of Nigeria and the Russian Federation to the United Nations. He also met with a number of representatives of non-governmental organizations and held a press conference.

9. On 15 April 2011, the former Special Rapporteur appeared before the Tom Lantos Human Rights Commission of the United States House of Representatives in a hearing on human rights and counter-terrorism in the northern Caucasus.

10. On 19 April 2011, the former Special Rapporteur addressed the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament in Brussels during a hearing on the main achievements of, and future challenges for, the European Union counter-terrorism policy.

11. The former Special Rapporteur participated in the special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on the prevention of terrorism, held in Strasbourg, France, at the headquarters of the Council of Europe from 19 to 21 April, and co-organized by the Counter-Terrorism Committee and the Council of Europe.

12. The Counter-Terrorism Implementation Task Force convened an inter-agency meeting, on 12 and 13 May 2011, at the Greentree Estate, New York State, United States of America, which was attended by the former Special Rapporteur.

13. At the invitation of the Transitional Government of Tunisia, the former Special Rapporteur conducted a follow-up mission to that country from 22 to 26 May 2011. He had discussions with the Minister of Justice and Human Rights, the Minister of the Interior and Local Development, the Secretary of State for Foreign Affairs, the Prosecutor General for the Administration of Justice, the President of the fact-finding commission established to investigate human rights abuses since 17 December 2010, the spokesperson of the High Council for the realization of the objectives of the revolution, political reform and democratic transition, law enforcement officials, and representatives of the civil society, including lawyers. The former Special Rapporteur also visited the detention centre at Bouchoucha and Al Mornaguia Prison, where he interviewed persons, in private, suspected of terrorism-related crimes, and, upon the conclusion of his visit, issued a press statement.[1] The present Special Rapporteur will present the report on this follow-up mission to the Human Rights Council in 2012.

14. On the margins of the seventeenth session of the Human Rights Council, the former Special Rapporteur participated, on 1 June 2011, as a panellist in a discussion on the issue of the human rights of victims of terrorism, pursuant to Council decision 16/116 of 24 March 2011.

15. The former Special Rapporteur attended the eighteenth annual meeting of special procedures of the Human Rights Council, held in Geneva from 27 June to 1 July 2011. On 30 June 2011, he met with the Ambassador of Burkina Faso.

[1] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11066&LangID=E.

16. On 29 June 2011, the former Special Rapporteur held a press conference in Geneva on the human rights aspects of Security Council resolutions 1988 (2011) and 1989 (2011), both adopted on 17 June 2011 under Chapter VII of the Charter of the United Nations, pursuant to which the Taliban and Al-Qaida sanctions regimes were separated from each other.[2]

III. Activities of the present Special Rapporteur

17. On 8 August 2011, the present Special Rapporteur attended a meeting convened in London with lawyers, non-governmental organizations and parliamentarians involved in the Gibson Inquiry set up by the Government of the United Kingdom of Great Britain and Northern Ireland to examine allegations of collusion by officers of the British intelligence and security services in respect of acts of torture or inhuman or degrading treatment by officials of other States, during interrogations relating primarily to allegations of involvement in terrorism. The meeting was convened to address perceived shortcomings in the Inquiry's terms of reference and operating procedures. The Special Rapporteur subsequently received written communications on the subject from the United Kingdom Parliamentary Committee on Extraordinary Rendition, relevant non-governmental organizations and lawyers representing the victims. These communications and the issues to which they have given rise are under consideration by the Special Rapporteur, who is working in cooperation with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez.

IV. Preliminary outline of areas of interest to the present Special Rapporteur

18. The Special Rapporteur pays tribute to the work of his predecessor Martin Scheinin. He adopts and will aim to build upon, and elaborate, the 10 areas of best practice identified by Mr. Scheinin in his 2011 annual report to the Human Rights Council (A/HRC/16/51).

19. The Special Rapporteur would like to highlight some areas that are of interest to him in the discharge of his mandate, including the rights of victims of terrorism (subsect. A), the issue of prevention of terrorism (subsect. B), country visits (subsect. C) and cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, as well as non-governmental organizations and other regional or subregional international institutions (subsect. D).

A. The rights of victims of terrorism

20. The Special Rapporteur wishes to emphasize that, during the period of his tenure, he is committed to ensuring that proportionate attention is paid to the rights of direct and indirect victims of acts of terrorism, and the duties of States to actual and potential victims. Any sound, sustainable and comprehensive strategy for

[2] http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11191&LangID=E.

combating terrorism requires the recognition of the suffering of victims of terrorist acts. States have important duties in this regard. The first obligation of any State — indeed, a key component of its raison d'être — is to protect the lives of its citizens, and of all individuals within its territory and subject to its jurisdiction, which includes: the duty to take reasonable measures, within the lawful and proportionate exercise of State powers, and in a manner consistent with the protection of human rights, to prevent the materialization of a real and immediate risk to life; the duty to conduct thorough, independent and impartial investigations when it is plausibly alleged that this primary positive obligation has been violated; the duty to investigate and bring to justice the perpetrators of acts of terrorism in a manner consistent with international standards on the protection of human rights; and the duty to afford adequate reparation to direct and indirect victims of terrorism in cases where, on inquiry, it is established that the State has failed to discharge its primary obligation to take reasonable steps to prevent violations by non-State actors of the right to life or the right to physical security.

21. States also have broader duties with respect to supporting the victims of terrorism, even in cases where the relevant authorities have done all that can reasonably be required of them, within the lawful and proportionate exercise of their powers, to prevent acts of terrorism from occurring. The United Nations Global Counter-Terrorism Strategy[3] stresses "the need to promote and protect the rights of victims of terrorism"[4] and identifies the "dehumanization of victims of terrorism in all its forms and manifestations" as one of the conditions conducive to the spread of terrorism.[5] The 2005 World Summit Outcome stresses "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief".[6] In resolution 1963 (2010), the Security Council, while "(e)xpressing its profound solidarity with the victims of terrorism and their families", stressed the "importance of assisting victims of terrorism, and providing them and their families with support to cope with their loss and grief", recognized "the important role that victims and survivor networks play(ed) in countering terrorism, including by bravely speaking out against violent and extremist ideologies" and in that regard, welcomed and encouraged "the efforts and activities of Member States and the United Nations system, including the Counter-Terrorism Implementation Task Force (CTITF)" in this field.[7] Human Rights Council in its resolution 13/26 deeply deplored the suffering caused by terrorism to the victims and their families and expresse(d) its profound solidarity with them, and stresse(d) the importance of providing them with proper assistance.[8]

22. Dehumanization of victims of terrorism can take various forms, including reducing them to mere pretexts for justification of tougher counter-terrorism measures by States that violate human rights. The Special Rapporteur concurs with the statement made by his predecessor on the occasion of the Human Rights Council panel discussion on the issue of the human rights of victims of terrorism, namely, that Governments:

[3] General Assembly resolution 60/288, as reaffirmed by Assembly resolutions 62/272 and 64/297.
[4] General Assembly resolution 60/288, annex, sect. IV, chapeau.
[5] Ibid., annex, sect. I, chapeau.
[6] See General Assembly resolution 60/1, para. 89.
[7] See Security Council resolution 1963 (2010), nineteenth preambular paragraph.
[8] See Human Rights Council resolution 13/26, para. 3.

"may make public statements about terrorists violating human rights and the human rights of victims of terrorism being a priority compared to 'human rights of terrorists'. All too often, such words are mere rhetoric, and the Governments resorting to them fail to address the rights and concerns of victims of terrorism."[9]

23. The Special Rapporteur considers it essential that the protection of the rights of the victims of terrorism be perceived as a genuine legal duty resting primarily with States, and not misappropriated as a pretext for violating the human rights of those suspected of terrorism, for taking emergency measures that provide for exertion of excessive and disproportionate executive powers, or for other essentially political actions, and will be adamant in respect of holding States accountable whenever he considers that the obligation to protect rights of victims of terrorism is being used as a cover for repressive State action which is inconsistent with international standards on the investigation, trial and punishment of those alleged to have been involved in the preparation, instigation or commission of acts of terrorism.

24. Whereas the United Nations Global Counter-Terrorism Strategy makes a pledge to Member States to only "consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives",[10] the Special Rapporteur considers that States are bound by an international human rights obligation to provide for such assistance to victims of terrorism, including their families. In his view, however, the obligation goes further than that and includes, but is not limited to, the duty to prevent acts of terrorism; the duty, if they have occurred, to properly investigate, publicly disclose the truth and bring the perpetrators to justice; the duty to investigate any allegations of culpable failure on the part of State authorities, in the lawful and proportionate exercise of their powers, to take reasonable steps to prevent acts of terrorism; legal recognition of victims of terrorism; pecuniary compensation, including for moral damages sustained; rehabilitation; provision of health care and psychosocial and legal assistance; ensuring a safe environment for the return or, if impossible, the resettlement of persons displaced by acts of terrorism or counter-terrorism measures; provision of moral support; and fostering good community relations and providing human rights education as a means of furthering tolerance.

25. Reparation schemes put in place on the national level should follow certain principles, some of which are listed below by way of example. Reparation schemes should aim at full restitution and foresee individual and collective reparation for both victims of counter-terrorism measures by the State and victims of terrorist acts, and follow a participatory approach. National reparation mechanisms must be independent and provide for adequate, effective and prompt reparation, which includes their being readily accessible and their taking a gender perspective into account. Compensation must never become a substitute for bringing perpetrators to justice or for revealing the truth in compliance with applicable international human rights obligations. States may also choose to provide financial assistance to organizations supporting victims of terrorism in order to comply with their international obligations vis-à-vis victims of terrorism. On the other hand, the

[9] See http://www.ohchr.org/EN/Issues/Terrorism/Pages/Statements.aspx.

[10] See General Assembly resolution 60/288, annex, sect. I.

Special Rapporteur will also monitor hindrances to the work of victims support organizations, in cases where, for example, over-broad criminal provisions under the umbrella of "material support" to terrorism may result in obstruction of the efforts of those organizations.

26. The Special Rapporteur will focus on the situation of victims of terrorism and study the issue further while at the same time continuing to hold Governments to account, in a spirit of constructive and open dialogue, for other human rights violations in the context of countering terrorism.

27. The Special Rapporteur considers that the model provisions on reparations and assistance to victims contained in his predecessor's report to the Human Rights Council on 10 areas of best practices in countering terrorism[11] as well as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[12] provide useful standards and guidance, including on best practices.

28. The Special Rapporteur is inspired by initiatives taken by States and international organizations to put the plight of victims of terrorism in the agenda and to promote a human rights-based approach in addressing that issue, including the 9 September 2008 symposium hosted by the Secretary-General on supporting victims of terrorism;[13] the 2010 workshop on a study of best practices on supporting victims of terrorist crimes and related offences as defined in national and international law, held in Siracusa, Italy, and co-organized by the International Institute of Higher Studies in Criminal Sciences and the Counter-Terrorism Implementation Task Force, which has formed a dedicated Working Group on Supporting and Highlighting Victims of Terrorism; the panel discussion held on 1 June 2011 on the issue of the human rights of victims of terrorism pursuant to Human Rights Council decision 16/116; and Council resolution 17/8 which recommended that the General Assembly proclaim 19 August as the International Day of Remembrance of and Tribute to the Victims of Terrorism.

B. Prevention of terrorism

29. Another substantive issue falling within his mandate on which the Special Rapporteur would like to focus during the period of his tenure is that of the prevention of terrorism. It is now widely accepted that by promoting and protecting all human rights under their obligations to be fulfilled pursuant to international human rights law, Member States are also actively preventing terrorism by addressing the conditions conducive to it, although, in the view of the Special Rapporteur it is very clear that none of these conditions can justify or excuse acts of terrorism. The Global Counter-Terrorism Strategy clearly places human rights squarely at the centre of the fight against terrorism and emphasizes that (a) measures taken to counter terrorism must comply with international human rights law;[14] (b) respect for all human rights for all and the rule of law is the basis of the fight

[11] See A/HRC/16/51, para. 25.

[12] General Assembly resolution 60/147, annex.

[13] See http://www.un.org/terrorism/pdfs/UN%20Report%20on%20Supporting%20Victims%20of%20Terrorism.pdf.

[14] See General Assembly resolution 60/288, annex, para. 3.

against terrorism and essential to all components of the Strategy;[15] and (c) that the denial of human rights and the rule of law might, in itself, create conditions that are conducive to terrorism.[16] Security Council resolution 1963 (2010) not only echoes pillar I of the Strategy, which reiterates that violations of human rights are one of the conditions conducive to the spread of terrorism, but goes a step further by introducing a positive formulation. For the first time in a resolution, the Council recognized that terrorism would not be defeated by military force, law enforcement measures, and intelligence operations alone, and underlined, inter alia, the need to strengthen the protection of human rights and fundamental freedoms.[17]

30. In this context, the Special Rapporteur is convinced that by deepening understanding of the link between neglect of human rights and grievances — actual or perceived — that cause individuals to make the wrong choices, conditions conducive to the spread of terrorism could be more effectively addressed. The interrelation between respect for all human rights — civil, cultural, economic, political and social — and prevention of terrorism deserves further attention. Examining this link has the potential to result in assistance to Member States in formulating effective policies to prevent terrorism, while respecting and complying with human rights obligations. The fact that human rights featured prominently in the agenda of the above-mentioned April 2011 special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on the prevention of terrorism at Council of Europe headquarters in Strasbourg is an encouraging sign.

31. The two substantive areas identified above as being of interest shall by no means be regarded as constituting an exhaustive focus. The Special Rapporteur will deal with all other issues within the scope of his mandate when and as they arise.

C. Country visits

32. In terms of planned country visits, the Special Rapporteur has received an invitation to visit Burkina Faso during the course of 2011. The Government of Chile has indicated that a country mission could be conducted in 2012.

33. There are outstanding visit requests from Algeria, Malaysia, Nigeria, Pakistan, the Philippines, the Russian Federation and Thailand. The Government of Egypt, in the interactive dialogue with the Human Rights Council and with the former Special Rapporteur, on 7 March 2011, stated that it had benefited from the detailed discussions held during the country visit of the former Special Rapporteur to Cairo in April 2009 and gave its assurance that the request for a second visit would be seriously and positively examined, together with other requests under special procedures mandates, as soon as the current transitional phase in the political and governmental organization of Egypt had been completed.

34. In terms of envisaged country missions, the Special Rapporteur emphasizes that when requesting invitations for country visits from Governments, he, like his predecessor, will continue to pay due regard to the partnering countries of the Integrated Assistance for Countering Terrorism (I-ACT) initiative of the Counter-

[15] Ibid., annex, sect. IV, chapeau.

[16] Ibid., annex, sect. I, chapeau.

[17] See Security Council resolution 1963 (2010), fourth preambular paragraph.

Terrorism Implementation Task Force. In accordance with pillar III of the United Nations Global Counter-Terrorism Strategy on "measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard" and the recognition "that capacity-building in all States is a core element of the global counter-terrorism effort",[18] the Task Force aims to enhance the capacity within the United Nations system to help interested Member States, upon their request, implement the United Nations Global Counter-Terrorism Strategy in an integrated manner across its four pillars.

35. Country missions of the Special Rapporteur provide an excellent opportunity to contribute, in particular, to the identification of gaps, if any, in the implementation of pillar IV of the Global Counter-Terrorism Strategy on "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", and enable the human rights entities of the Task Force to assist the respective Government in fully implementing the Strategy. As indicated, Burkina Faso, as one of the pilot partnering countries of the I-ACT initiative, has accepted the request by the Special Rapporteur for an invitation to undertake such a country visit. The Special Rapporteur would like to thank the Government of Burkina Faso for the invitation and expresses his hope that the Government of Nigeria, as another pilot partnering country, will extend an invitation as well.

D. Cooperation

36. In its resolution 65/221, the General Assembly welcomed the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism (para. 12).

37. In its resolution 15/15, the Human Rights Council requested the Special Rapporteur to develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, with, inter alia, the Counter-Terrorism Committee of the Security Council, including its Executive Directorate, the Counter-Terrorism Implementation Task Force, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and treaty bodies, as well as non-governmental organizations and other regional or subregional international institutions, while respecting the scope of his or her mandate and fully respecting the respective mandates of the above-mentioned bodies and with a view to avoiding duplication of effort (para. 2 (f)).

[18] See General Assembly resolution 60/288, annex, sect. III, introduction.

38. The Special Rapporteur looks forward to implementing the provisions of these resolutions and, in regard to cooperation with relevant United Nations bodies, is encouraged by the supportive letters received from the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, as transformed, pursuant to Security Council resolution 1989 (2011), into the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, and from the Executive Director of the Counter-Terrorism Committee Executive Directorate. The Special Rapporteur also hopes to continue the cooperation with the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) concerning counter-terrorism and the Security Council Committee established pursuant to resolution 1988 (2011), that was achieved by the former Special Rapporteur with the former Security Council Committee established pursuant to resolution 1267 (1999).

V. Conclusions and recommendations

39. Since the Special Rapporteur assumed his mandate only on 1 August 2011, he takes the opportunity in the present report to provide a preliminary outline of his areas of interest pursuant to the discharge of his mandate, regarding which he will develop recommendations.

40. While building and elaborating on the compilation of the 10 areas of best practice prepared by his predecessor (see A/HRC/16/51), the Special Rapporteur intends to ensure that proportionate attention is paid to the rights of direct and indirect victims of acts of terrorism, and to the duties towards actual and potential victims that States are obligated to fulfil.

41. Furthermore, the Special Rapporteur would like to focus during the period of his tenure on the issue of prevention of terrorism through, promotion and protection of human rights, and in compliance with obligations under, human rights law.

42. In addition, the Special Rapporteur seeks to conduct visits to partnering countries of the "Integrated Assistance for Countering Terrorism" initiative of the Counter-Terrorism Implementation Task Force. Moreover, the Special Rapporteur intends to continue to cooperate with Governments and all pertinent actors, including relevant United Nations bodies, specialized agencies and programmes, as well as non-governmental organizations and other regional or subregional international institutions.

43. The Special Rapporteur wishes to emphasize that while the present thematic report focuses, inter alia, on the rights of victims of terrorism, this dimension of the mandate will in no sense detract from the importance of ensuring compliance of States with their human rights obligations in respect of the investigation, prosecution and punishment of those alleged to have engaged in the preparation, instigation or commission of acts of terrorism. These twin imperatives are complementary and form the dual pillars essential to the maintenance of effective human rights-compliant anti-terrorism initiatives. The Special Rapporteur emphasizes that both sets of obligations involve duties resting primarily on States. The essence of lawful State action in the context of anti-terrorism strategies lies in the striking of a fair and proportionate balance

between two sets of duties. While the striking of that balance is, in the first instance, a matter for national authorities, it is subject to international supervision.

44. **The Special Rapporteur will contribute to that supervision by closely scrutinizing the manner in which States have struck that balance, and by seeking to identify those situations in which States have inflicted further harm on the victims of terrorism by misappropriating their plight as a pretext for excessive or oppressive executive action, or as a justification for the violation of human rights.**

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Civilian capacity in the aftermath of conflict

Report of the Secretary-General

Summary

Countries emerging from conflict typically confront a wide range of urgent demands to build and sustain peace, yet they often face a critical shortage of capacity to meet priority needs quickly and effectively. The international community has recognized this challenge, and many bilateral and multilateral actors have taken steps to improve support to conflict-affected countries. These individual efforts, however, have fallen short of a establishing a reliable and effective mechanism to provide countries with the assistance that they seek. The United Nations still struggles to recruit and deploy civilian expertise and to support national actors in expanding and deepening their skills. In March 2010, I appointed a Senior Advisory Group, chaired by former Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno, to undertake an independent review of civilian capacity in the aftermath of conflict with a view to providing concrete and practical proposals to strengthen civilian support for sustainable peace and development.

The report of the Senior Advisory Group (A/65/747-S/2011/85) was presented to Member States in February 2011. It is a wide-ranging report that makes a number of recommendations relevant to Member States, to regional and civil society organizations and to the United Nations. Recognizing the scope of the report, I established a Steering Committee, chaired by Susana Malcorra, Under-Secretary-General for Field Support, to lead a coordinated follow-up to the report.

The present report is the first response of the United Nations to the independent review on civilian capacity in the aftermath of conflict. Its starting point is the current United Nations system and the procedures and practices that fall within my purview as Secretary-General to strengthen the support provided by the Organization

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to countries emerging from conflict. Putting our own house in order is a prerequisite for effective engagement with Member States, regional organizations, civil society partners and, above all, the countries seeking our assistance. This alone, however, is not enough to improve international civilian support. We all have an obligation to review our respective individual efforts, as well as our partnerships, in support of communities and people who have endured violence and deprivation. In subsequent phases I shall focus on the role that others must play and the partnerships that we must put in place to enable us to collectively strengthen the quality and efficiency of civilian support after conflict.

The present report identifies a set of concrete priority actions and timelines for the United Nations over the course of the next 12 months aimed at improving its civilian response and becoming a better partner for others. These include:

(a) Developing guidelines for better use and development of national capacity, as well as guidance to ensure that procurement practices do not exclude local suppliers;

(b) Giving stronger strategic direction to new planning processes;

(c) Undertaking a review of how gender expertise is structured and deployed;

(d) Consulting Member States and regional organizations on developing stronger partnerships, to ensure we make the best possible use of their capabilities;

(e) Establishing an online platform to broadcast civilian needs and available capacities and better connect Governments, the United Nations and external capacity providers;

(f) Exploring modalities to broaden the scope for deploying personnel provided by Governments or other entities;

(g) Detailing critical capacity gap areas and ensuring that designated United Nations focal points engage with external partners to address them;

(h) Pursuing a corporate emergency model in the United Nations Secretariat to enable an effective response to situations where rapid deployment is required;

(i) Ensuring that United Nations leaders in the field exercise the operational and financial agility entrusted to them to fulfil their mandates;

(j) Applying the principle of comparative advantage in discharging mandates;

(k) Piloting these approaches in the field, for example mobilizing national and regional expertise and examining the scope for local procurement in South Sudan.

Above all, the present report makes clear that a sustainable peace is a national peace. Externally imposed solutions or skills cannot replace ownership by, and capacity of, national communities, their leaders and their institutions. That starting point must be our end goal.

I. Introduction

1. National efforts to build and consolidate peace after conflict need to be supported by timely, effective civilian capacities. As I emphasized in my report on peacebuilding in the immediate aftermath of conflict (A/63/881-S/2009/304), we must seize the window of opportunity often offered in the post-conflict period to provide basic security, deliver peace dividends, build confidence in political processes, strengthen national capacity to lead peacebuilding and lay the foundations for sustainable development.

2. To meet this challenge, the international community, especially the United Nations, needs to deliver the requisite specialized civilian capacities more quickly and effectively, i.e. the skills and expertise needed to support national actors as they seek to re-establish the rule of law, revitalize the economy, restore basic services to the population and develop the capacities to make these gains sustainable. The risk of relapse in the early years of peace is high. Instability and conflict spill over borders and destabilize neighbouring countries. There are strong linkages between security, peace and development; countries affected by conflict are the furthest away from achieving the Millennium Development Goals. For sustainable peace and development, we need to invest in the right civilian capacities early on.

3. It was in response to these imperatives that I initiated a review to analyse how to broaden and deepen the pool of civilian expertise to support the immediate capacity-development needs of countries emerging from conflict. In March 2010, I appointed a Senior Advisory Group, chaired by former Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno, to carry out an independent review. The Group consulted entities across the United Nations system, at Headquarters and in the field, Member States, the Peacebuilding Commission, regional organizations, civil society and academia. I submitted its report (A/65/747-S/2011/85) to the President of the General Assembly and the President of the Security Council on 22 February 2011. I subsequently appointed a Steering Committee, with members representing entities from across the United Nations system, to consider how the recommendations of the Senior Advisory Group should be taken forward.

4. The report of the Senior Advisory Group is founded on certain key principles: that stronger civilian capacities are vital to building lasting peace; that latent national capacities in conflict-affected countries must be nurtured; that international support must respond to demand, not be driven by supply; and that the United Nations needs to be more responsive, flexible and cost-effective in providing that support. I have been encouraged by the widespread support Member States have expressed for these principles, for the emphasis in the report on a demand-driven approach and field focus and for many of its recommendations.

5. I share the assessment of the Senior Advisory Group that to meet these challenges we need to build stronger partnerships with external partners; broaden the supply of specialized capacities by better identifying and deploying those available, especially in the global South and among women; develop more effective ways of working together across the United Nations system; and develop a management culture and business practices that enable my senior leaders to respond swiftly and effectively to changing realities in the field. The emphasis placed by the Senior Advisory Group on achieving these goals while making better use of systems

already in place, is in line with the approach I have charted to build a more accountable, transparent, efficient and effective United Nations.

6. In my second term I intend to prioritize measures that will make the United Nations more effective and efficient, including through my change management programme. A key feature will be the implementation of the present report on civilian capacity. Many existing United Nations initiatives (such as my agenda for action on peacebuilding in the immediate aftermath of conflict, the global field support strategy, the strategic framework on women, peace and security, our system-wide coherence efforts and my forthcoming report on preventive diplomacy) have the potential to improve the deployment of civilian capacities, even if that is not their primary objective. So do initiatives developed with partners, such as the World Bank *World Development Report 2011*, the United Nations-European Commission partnership on natural resources, conflict and peacebuilding, and the International Dialogue on Peacebuilding and Statebuilding.

7. In the present report I set out how the United Nations should respond to the report of the Senior Advisory Group: what action the United Nations itself should take to improve the quality, speed and effectiveness of civilian support to conflict-affected countries and what it should do in partnership with others. I set out a road map for action along three major axes: developing greater national capacity and ownership in our post-conflict response; building the external partnerships and making the necessary adjustments within the United Nations system to source the civilian capacities required; and exercising the organizational agility necessary to respond nimbly to unpredictable post-conflict situations.

8. I envisage our response falling into different categories. First are the priorities for early implementation: those initiatives falling within my own authority or that of the executive heads of United Nations entities which offer the greatest potential for impact on the ground. I set out in the present report how I intend to pursue these in the short term. Next are ideas that require more careful reflection before being taken forward. Some of these fall within the purview of the United Nations system, others are for Member States or other stakeholders to consider; I intend to revert to Member States on these ideas in more detail at a later date. Last are issues which are already being addressed in other reform processes within the United Nations. Most of these should continue to be dealt within those processes, while highlighting their relevance to civilian capacities.

9. Much of my agenda will be applicable across the various responses of the United Nations in the aftermath of conflict. Where humanitarian needs persist in parallel with the beginning of recovery and development programming, humanitarian action will continue to be guided by the principles of humanity, impartiality, neutrality and independence.

II. National capacity

10. As communities emerge from conflict they often face a critical shortage of capacities to secure sustainable peace. As I stressed in my reports on peacebuilding in the immediate aftermath of conflict and on women's participation in peacebuilding (A/65/354-S/2010/466) and as the Security Council and the Peacebuilding Commission have emphasized, identifying, developing and using national capacities must be a priority in the aftermath of conflict. This will help to

develop the national ownership that is essential to achieving sustainable peace and development.

11. This is not a technical exercise. Supporting post-conflict national institutions is a high-risk, political undertaking. It extends beyond Governments into civil society and the private sector and beyond national institutions to subnational, local and community levels. There are tensions between the imperatives of starting to build national capacity from day one and delivering early peace dividends like basic services.

12. Nevertheless, capacity-development is a process that must begin from the earliest days of international involvement, a challenge to be addressed by the United Nations and all international actors. It must include capacity assessment, capacity-building, including through targeted training and mentoring, capacity utilization, and capacity sustainability. While there are many examples of the United Nations developing and using national capacity, a more systematic approach is needed. Within the United Nations, I have asked the inter-agency working group on capacity-development, chaired by the United Nations Development Programme (UNDP), to develop, by 2012, core principles and guidelines for better using and developing national capacity in post-conflict contexts, as well as plans for developing concrete tools to equip field teams to conduct capacity assessments, design strategies and monitor results. These tools should include strategies to target specific constituencies, including women and young people.

13. One important aspect to be considered is the need to avoid any negative impact on national capacity-development, for example the brain drain of local capacity to international and bilateral organizations. In order to foster coherence among international efforts, the United Nations will work with the World Bank and maintain a dialogue with interested Member States. We can only succeed if all major international actors work together to develop national capacity.

14. Equally important in strategies for capacity-development is to pay more attention to the subnational level, where results are often more visible and important to people and can catalyse capacity-development efforts at the national level. This is vital in transitions, where the inability of a State to deliver on core functions can undermine its legitimacy and credibility and put peace consolidation at risk.

15. While we must aim to maximize the use of national capacity from the outset, in some cases international capacity is needed to provide the requisite technical expertise. In other cases, international capacity may be necessary to ensure impartiality, neutrality or security, or where a protracted conflict has weakened systems of accountability and transparency to the point where temporary substitution measures are needed to restore confidence. Such measures should be one element of a broader strategy, with benchmarks set for their duration and a realistic exit strategy clearly defined.[1] Such strategies must take into account the need for proper balance and sequencing of the use of international assistance and national (even if still weak) capacities in order to further the goal of strengthening national legitimacy, ownership and long-term sustainability. Direct international support and capacity-development must take place in parallel to prevent long-term dependency on international resources.

[1] The United Nations Children's Fund (UNICEF) is developing capacity-development strategies to inform their programmes in South Sudan, with an emphasis on outcomes and exit strategies.

16. One of the ways in which United Nations peacekeeping operations and special political missions can contribute to building capacity is by training national staff. For example, a capacity-building project launched in 2010 by the United Nations Integrated Mission in Timor-Leste is training over 900 national staff, using local and regional training providers where possible. Such efforts should be guided by national requirements[2] and built into early mission planning. The use of National Professional Officers increases the opportunities for national staff to contribute to the work of field missions and to build their capacities in critical peacebuilding and State-building functions.[3] The Department of Peacekeeping Operations, the Department of Field Support, UNDP and other United Nations entities are collaborating to mobilize national expertise for South Sudan, including from the diaspora where appropriate, for example through job fairs in neighbouring countries and a national United Nations Volunteers (UNV) programme. Such initiatives are equally important in non-mission countries, where efforts to build national capacities to manage conflict[4] are an important part of sustainable peacebuilding. I urge Member States to support these initiatives by funding return and reintegration for nationals and programmes that foster national staff development.

17. Capacity-development needs to be built into planning from the start. Recent innovations such as the post-conflict needs assessment, the strategic assessment, the integrated strategic framework and the revised guidelines for United Nations Development Assistance Frameworks have done much to improve integrated United Nations planning. But we still have further to go. Early planning must include a strong field perspective, with United Nations staff already in country working with national stakeholders to assess national priorities and existing national capacity,[5] including in the diaspora. This will help to ensure that planning is driven by national priorities and needs and not by the availability of international staff or other resources, and that it explores the opportunities to use and develop latent national capacity. Plans need to be flexible enough to adapt to changing circumstances and an increasing degree of national ownership. The Integration Steering Group has decided that the integrated mission planning process guidelines will be revised by 2012. This will include reflecting the importance of engaging national actors in the assessment, planning, and implementation phases. Clear strategic guidance will be provided on how to ensure that national perspectives and capacities are taken into account from the outset of each planning process.

18. Strategies for capacity-development should pay special attention to the needs and capacities of women. As my report on women's participation in peacebuilding emphasized, post-conflict transition is a critical moment for reassessing gender roles and capacities and taking steps towards gender equality. Work is under way to integrate gender equality principles into United Nations post-conflict planning. United Nations Development Assistance Frameworks periodically undergo retrospective gender reviews and gender mainstreaming guidance has been developed for post-conflict needs assessments.

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[2] Training for national staff is a joint priority of the Government of Timor-Leste and the United Nations Integrated Mission. Mission training courses and facilities are open to staff in government ministries and other national institutions, as far as resources allow.

[3] As in the case of the new mission in South Sudan.

[4] Such as the Ghana peace infrastructure supported by the Department of Political Affairs and the United Nations Development Programme.

[5] See A/63/881-S/2009/304, para. 46.

19. However, while guidelines can be important tools, they do not appear to be effective in ensuring that women's needs are addressed, or that women are included in post-conflict planning and programme implementation. The factors that do make a difference are committed and convinced leadership, the early engagement of gender experts (particularly with sector-specific skills) and effective accountability frameworks. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) will undertake by mid-2012 a rapid and cost-effective review of the way gender expertise is structured and deployed in post-conflict situations, with recommendations for increasing its effectiveness. In addition, I call on my senior leaders to ensure that United Nations planning frameworks integrate targets and indicators from the system-wide strategic framework based on Security Council resolution 1325 (2000) to better support the participation of women in peacebuilding.

20. Since 2009, the United Nations has been working with Member States to encourage more women to join their national police services and to nominate more women for international deployment as part of the global effort to increase the share of women in United Nations police components to 20 per cent by 2014.

21. Support for core government functions is vital for reinforcing national ownership. The priorities that the Senior Advisory Group singled out were policy management and prioritization, aid coordination and public financial management. The *World Development Report 2011* pointed to the importance of effective institutions for citizen security, justice and jobs. The preliminary results of the lessons-learned review of public administration in post-conflict contexts add civil service personnel management and local government capacities. Civil service management should include measures to attract and retain personnel, including through a variety of incentives.

22. Strengthening core government functions requires more than stronger technical capacities, however. Public administration and governance are legitimized not only by the way in which the State delivers technically, but also through its interaction with society: the way decisions are made, how public goods and resources are allocated and how populations can engage with the State. Building confidence between States and populations through participation in decision-making and delivery of peace dividends is crucial to avoid the recurrence of conflict. Early international engagement must focus on strengthening capacities for building State-society relations. Sufficient funding from Member States is essential to enable an effective and predictable United Nations response in these areas.

23. In its report, the Senior Advisory Group recommends that, where appropriate, international personnel in post-conflict settings should be physically co-located within national institutions. We have experience of this in many post-conflict settings and we are examining the options for co-location of civilian staff with Government personnel in the new mission in South Sudan.[6] In assessing whether co-location is appropriate and when, the degree of absorption capacity of national institutions should be considered, as should the need to safeguard the impartiality of international assistance,[7] effective human rights monitoring and reporting, the

[6] See Security Council resolution 1996 (2011), para. 22.

[7] This is particularly important for the humanitarian agencies that base their response on the principles of impartiality, neutrality and independence, which in some cases may make co-location inappropriate.

security of staff and whether international staff are responsible for mentoring and knowledge transfer or for providing technical expertise. The inter-agency working group on capacity-development should include in its guidelines advice on co-location, building on past experience.[8]

24. United Nations procurement may involve opportunities to expand the positive economic impact of United Nations field presences. Local procurement is already substantial in some post-conflict countries such as the Democratic Republic of the Congo and Liberia. Business seminars are conducted in those countries to inform local markets of the procurement requirements of the United Nations. I request field missions to make every effort to include local suppliers in procurement solicitations issued by the United Nations. Beginning in 2012, I will request peacekeeping operations periodically to provide information on their local economic impact and their contribution to local economies.

25. As for the agencies, funds and programmes, the World Food Programme (WFP) has a procurement programme that seeks to stimulate the agricultural sector by purchasing from small farmers;[9] the United Nations Children's Fund (UNICEF) procures an increasingly large proportion of supplies on the local market; and UNDP purchases local goods and services through streamlined bidding processes. Conflict-sensitive local procurement in the humanitarian phase can help establish partnerships that can be leveraged during post-conflict recovery.

26. Much more can be accomplished within the existing regulatory framework for procurement without compromising transparency, international competition and quality standards. The Department of Management will issue guidance so that procurement practices do not exclude local suppliers, so that as far as possible requisitions can be unbundled to make them more accessible to local providers, including microenterprises, and so that financial criteria for eligible vendors can be reviewed to enable small companies to compete. We are examining the scope for local procurement in South Sudan. One possibility is for non-governmental organizations to support small companies to bid for contracts for maintenance and support services,[10] or help to establish small companies, where they do not exist.

27. I have asked the Department of Management to review existing United Nations procurement processes and procedures in 2012, to analyse selected country situations to identify obstacles to greater local procurement and whether these can be addressed within existing procedures, to assess recent innovations and to recommend revisions accordingly.[11] I support similar innovations in the agencies, funds and programmes.

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[8] For instance, UNICEF efforts to transfer knowledge and skills in the health sector in Afghanistan and the United Nations Development Programme (UNDP) support to aid management in Nepal and to the electoral commission in Liberia.

[9] Through the Purchase for Progress initiative, the World Food Programme has purchased maize in South Sudan to supply food for displaced Congolese and Central African refugees in South Sudan.

[10] As, for example, the Peace Dividend Trust has done in Timor-Leste and Afghanistan.

[11] The political impact of buying locally must also be considered. If greater local procurement tends to concentrate wealth among the powerful few, it may inadvertently increase inequality and tensions in a post-conflict society.

III. International civilian capacities

28. The recommendations of the Senior Advisory Group for more effective mobilization of international civilian capacities can be seen as three concentric circles: better leveraging of external capacity through partnerships with non-United Nations entities; enhanced capacity and interoperability across the United Nations; and change within the Secretariat. The area of external partnerships offers particular scope for innovative approaches that can deliver greater responsiveness on the ground.

A. Leveraging external capacity: partnerships with non-United Nations entities

29. The large number of United Nations interventions in conflict-affected countries and the breadth and complexity of their mandates, require more and increasingly specialized civilian capacities. These include "niche" functions (for example, public-private partnerships or specialized rule of law tasks like investigative expertise), as well as expertise that may be unique to a country or region, such as traditional justice or anti-piracy expertise. To find this expertise and fill current gaps, the United Nations needs to explore a greater variety of sources of capacity, particularly among actors from the global South, and to build effective partnerships with potential providers.

30. Building these partnerships will be a priority for my second term. In so doing I will be guided by certain principles. First, accessibility and inclusiveness: new partnership opportunities must be visible and accessible to all potential partners, from all regions. This should include countries with recent experience of change or transition, which offer a growing pool of relevant experience to draw upon.[12] This approach should also enable us to identify and access more capacities among women.

31. Second, to meet the needs of conflict-affected countries, we need a more broadly composed workforce in which core United Nations staff are supplemented by additional capacities deployed on a flexible, on-demand basis from Governments, international and regional organizations and non-governmental entities. This approach, already applied by United Nations agencies, funds and programmes and by some parts of the Secretariat, should align the composition of our workforce more closely with operational requirements. It will also offer Member States increased opportunities to provide civilian capacities in partnership with the United Nations. We will consult Member States to ensure that we make the best use possible of the capabilities of different countries and regions. I encourage Member States and regional organizations to participate actively in these consultations.

32. Within this broad policy framework, we are beginning work on the instruments and modalities that will be needed to support more effective deployment through external partners. As a first step, I intend to pilot tools to link demand and supply,

[12] For example, Indonesian expertise on mediation; the experience of Latin American countries in dealing with urban and criminal violence; Bangladeshi experience in promoting the empowerment of women in areas such as microcredit and community health; and South African electoral and mediation expertise in Burundi.

which can be developed progressively in the light of experience. Work has begun on developing a "virtual marketplace" of civilian capacity, an online platform where needs and capacities can be broadcast, helping Governments and the United Nations system to find potential suppliers of the capacities they need and to better connect the United Nations in the field to external capacity providers. The platform will offer information about standardized partnership modalities, so that the United Nations can rapidly access the capacities of partners without reinventing the process every time. It will also begin to publicize existing rosters — both those within the United Nations system and those managed by external providers — and enhance their efficiency by enabling roster managers to communicate with each other, as well as to understand better what experience and skills are currently most in demand.

33. The goal of better connecting with external partners is a complex and important undertaking which will not be fulfilled through a platform alone. To ensure that we make early progress towards this priority goal, we are setting up a small team, initially from within existing resources, to identify the main challenges to be addressed in implementation. The team will develop the necessary partnership modalities, create standardized legal arrangements to make long-term partnerships more fruitful and foster greater South-South and triangular cooperation, engaging closely in dialogue with Member States on the evolving demands and sources of capacity described below.

34. Modalities to enable partners to work together easily, freely available to all potential partners and operating within a clear policy framework, are essential to broadening the scope for deploying personnel provided by Governments or other entities, whether as individuals or as groups. The United Nations already has long-standing, efficient modalities (such as letters of assist and memorandums of understanding) that govern the deployment of military and police personnel and the provision of specialist logistics support from Member States to peacekeeping operations, as well as memorandums of understanding for the provision of standby personnel for humanitarian purposes.[13] The Department of Management will take the lead in developing ways to extend these to civilian deployment, including in situations where groups of specialized personnel are needed for specific initiatives, or where regional expertise is required and building on lessons learned in the agencies, funds and programmes in arranging such deployments with non-United Nations partners, including with regard to quality control and accountability issues.

35. In addition, there may be ways beyond the existing modalities to broaden the scope for deploying personnel provided by Governments or other entities. Once we have clarified what is possible when the Secretariat makes full use of its existing authority, I may revert to the General Assembly in 2012 with proposals to update the relevant policies.

36. I encourage Member States and established rosters and training centres to invest more in developing capacity in the global South. Many existing rosters already include members from North and South. While some civilian capacity partnerships may be supported from mission or agency budgets, other financing options, including trust funds, should be explored. Better communication between

[13] Such as the pool of experts the United Nations Office for Project Services can call on for its mine action services.

southern providers and the United Nations in the field can help identify new opportunities for South-South cooperation, including in areas where southern Governments may themselves have already faced and addressed similar challenges.[14] Partnering with centres of excellence or civil society organizations, especially those in the South, offers an entry point for tapping such capacities.[15]

37. I also encourage Member States to explore opportunities for triangular cooperation, such as for example the Intergovernmental Authority on Development (IGAD) initiative for capacity enhancement in South Sudan, supported by UNDP and Norway, under which the Government of South Sudan will place 200 civil servants from IGAD member States in key functions in South Sudan for two years. This project is also an example of South-South cooperation, as the countries sending their civil servants to South Sudan will continue to pay their salaries.

38. I encourage my senior leaders in the field to make greater use of United Nations Volunteers — 80 per cent of whom originate from the global South — in national capacity-building, especially at the local public administration and community levels, and to include them in early mission planning, particularly in integrated operations where UNV is working with UNDP and other United Nations partners in national institution-building as, for instance, in South Sudan. The Secretariat will work with UNV to implement the recommendations of the recent Department of Field Support-UNV partnership evaluation by, for example, placing greater emphasis on capacity-building for national staff and the use of national United Nations volunteers and more strategic deployment of those volunteers during periods of peace and development and the transition to United Nations country teams and political missions. In 2012, the Department of Field Support, the Department of Political Affairs and UNV will conduct a follow-on review to investigate why United Nations volunteers have been underutilized in political missions and to propose how to improve this engagement.

B. System-wide capacity and interoperability

39. Many United Nations entities across the system are involved in providing the range of civilian capacities required in complex post-conflict environments. National partners, whose resources are usually severely depleted, need to find the United Nations strategically and operationally coherent, notwithstanding the separate character, governance structures, mandate and source of financing of its different entities.

40. As the Senior Advisory Group observed, recruitment and appointment systems vary greatly across the United Nations. A United Nations entity cannot easily deploy personnel from another part of the system. In addition, most agencies, funds and programmes maintain their own rosters of specialized civilian experts to be deployed in a crisis. However, they are set up differently and are not easily interoperable. Since field operations demand a wide variety of expertise, much of

[14] Such as Brazilian economic revitalization projects in Angola, or South Africa's partnership with Germany to support legal and judicial training in South Sudan.

[15] For example, the Brazilian non-governmental organization Igarapé is developing a roster of civilian experts to deploy to peace operations, with the support of the Governments of Brazil, Canada and the United Kingdom of Great Britain and Northern Ireland.

which will be found throughout the wider United Nations system, the rosters throughout the system should be shared resources.

41. The civilian capacities online platform described above will be a first step towards greater system-wide collaboration. Establishing real interoperability, however, will be a more complex exercise. The Department of Management is leading an inter-agency group to define what measures would be required, including an inventory of existing rosters and related training, minimum standards for roster participants, gap identification and analysis of options (including the development of a joint or shared roster, cost sharing and administrative modalities for rapid release). Working with the Human Resources Network, the group will report on options by 2012.

42. Work is separately under way in the Department of Management to expand to the agencies, funds and programmes the staff exchange system (the Voluntary Initiative for Network Exchange) that currently operates in the Secretariat. I am committed to removing obstacles that hinder staff from one United Nations entity being deployed or recruited by another; mobility will remain a priority in my second term.

C. Within the United Nations Secretariat

43. United Nations missions and field operations are planned and staffed, and much civilian capacity is recruited and deployed, from among Secretariat staff. The tendency to try to find all the necessary capacities among Secretariat staff or through direct recruitment to the Secretariat means that we often fail to deliver the right civilian capacities quickly enough.

44. At the same time, strengthening our external partnerships and accessing more resources from across the United Nations system is not a substitute for improving the way we recruit and manage staffing in the Secretariat. Fundamental to improving this is the need to move away from using a single process to fulfil different human resources management needs for recruitment, promotion and assignment.

45. The Senior Advisory Group makes several useful proposals for measures to improve the ability of the United Nations to staff its missions. While some of these require further consideration, several of them, including mobility, staff welfare and performance management, are already being considered by the General Assembly or pursued in other reform processes. I believe that these are most effectively addressed under those existing initiatives. Some, such as staff welfare and mobility, have implications for the wider United Nations system.

46. I intend to pursue the recommendations for a corporate emergency model separately[16] (which will require defining the terms of such a model, including who may declare an emergency; developing a system for lateral moves of staff across the United Nations system; and developing a fast-track recruitment mechanism) and establishing a roster of rapidly deployable Secretariat staff who have undergone standardized training, including in management, human rights and gender issues.

[16] Drawing on the experience of the humanitarian crisis response models, including those established by the Office for the Coordination of Humanitarian Affairs, UNDP, UNICEF and the United Nations Population Fund.

47. The Senior Advisory Group recommends that clear and transparent processes be developed to manage mission start-ups and transitions. This is being addressed by initiatives such as the elaboration and extension of the global field support strategy, the ongoing review of the integrated missions planning process and preparatory work for my forthcoming report on funding, backstopping and support to special political missions.

IV. Expertise and accountability

A. Leadership and accountability

48. The report of the Senior Advisory Group includes recommendations to strengthen the capacity and accountability of senior United Nations leaders. I intend to build on existing initiatives to select leaders based on competence, to examine ways to conduct a more rigorous review of the track record of potential leaders, including on gender mainstreaming, and to use innovative and appropriate methods of assessment. I will also explore other initiatives aimed at ensuring the integrity of senior appointment processes, such as increasing the number of senior posts advertised. I will continue to require that women are included in all phases of the recruitment process and will encourage the conduct of interviews for senior-level positions.

49. In terms of improving the capacity of senior leaders to manage the United Nations response to conflict, we will explore ways in which training for leaders can be improved within existing resources. These include an increased focus on administrative and support issues in training for senior leaders, including sessions with their head of administration during induction; providing online advice to leaders, incorporating lessons learned from audit recommendations and the justice system; including staff development programmes in conference schedules to maximize opportunities for group learning; and ensuring leaders devote five days per year to training.[17] The Department of Peacekeeping Operations, the Department of Field Support and the Department of Political Affairs will continue to develop a methodology for missions to deliver scenario-based exercises targeting decision-making and crisis management.

50. I strongly share the view of the Senior Advisory Group that senior leaders should be held accountable for results to national actors and populations, as well as to the United Nations. Expected results should be defined on the basis of agreed goals. Accountability should extend beyond results to service provision and working with other parts of the United Nations system. Moreover, there should be a degree of shared accountability for the delivery of results between senior staff from across the United Nations system.

51. Strengthened oversight and accountability for results must, however, be seen in the context of complex post-conflict situations. Achieving results in such situations will often require taking a calculated degree of risk. Senior leaders should be empowered, not constrained, from taking measured risks.

[17] An example of current efforts to improve training for senior leaders is the 5-8 day mission-specific training programme being developed by the Department for Peacekeeping Operations for heads of military components.

52. I have asked the Department of Management to work with UN-Women to review and enhance the systems in place to uphold accountability for gender equality in the immediate aftermath of conflict, including accountability for the implementation of my seven-point action plan on women's participation in peacebuilding. Systems will include regular audits of progress against agreed criteria, such as the indicators in Security Council resolution 1325 (2000) and senior staff performance assessments. I will return to the General Assembly in 2012 with a further proposal for accountability for gender equality in post-conflict contexts.

B. Accountability and responsibility

53. I agree with the Senior Advisory Group that there are critical gaps in the provision of global civilian capacities and that we need to create mechanisms that can help fill these gaps, enhance accountability and reinforce substantive leadership. The Senior Advisory Group recommended establishing a cluster system and designated leads for core areas of peacebuilding activity. I support the underlying objective of the Group to deliver more effective, accountable and predictable international assistance in the aftermath of conflict. Capacity gaps represent not only structural deficits in international assistance but also urgent needs for countries with different contexts, in both mission and non-mission settings. Our aim must be to ensure that core areas are covered with access to sufficient deployable capacities, adequately funded and that there is no duplication. This is necessary to ensure that conflict-affected countries receive the support they need, but also to make the provision of support more efficient.

54. The consideration of what the United Nations system needs to do to strengthen core capacities cannot be separated from the issue of broader international capacities. A sustained dialogue is needed with Member States and the international financial institutions on the evolving demands for and sources of capacity. As a starting point, I have asked the Chair of the Steering Committee to consult Member States and other providers of civilian capacity to detail the demand for and sources of capacity in the priority areas identified by the Senior Advisory Group,[18] focusing on the most urgent operational needs (such as security, police and criminal justice sector reform) and building on the capacity mapping done by the Senior Advisory Group. Within these broad areas, more work is needed to pinpoint the critical capacity gaps, some of which are highly specialized functions. The needs and emerging lessons from immediate country situations, such as South Sudan, should help to illustrate what the gaps are and how they might best be filled. Dialogue with Member States and other key actors will also help to map civilian capacity and track long-term commitment to filling the gaps. It will inform and energize our efforts at clarifying responsibility and accountability for core peacebuilding areas.

55. Within the United Nations, I am committed to establishing a more practical, flexible approach to this challenge, based on the following elements:

(a) Within the United Nations system, a focal point is needed at Headquarters for each specific area, responsible for knowing where capacities and gaps exist;

[18] Basic safety and security, justice, inclusive political processes, core government functionality and economic revitalization.

(b) The role of the focal point will differ across areas, in the light of capacities and context;

(c) In addition to understanding global and country-specific capacities, the focal point for a particular area should identify existing knowledge products, help fill knowledge gaps and share best practices and lessons learned. The focal point will be responsible for ensuring that information on relevant commitments, along with the provision of technical assistance for gender mainstreaming and women's participation, is provided to country partners, in coordination with UN-Women;

(d) Focal points can provide an entry point into the United Nations system for field leaders seeking capacity, as well for Member States, service providers and other partners, thus helping formal and informal networks and exchange of information to flourish in each area;

(e) Arrangements for responsibility and accountability to provide capacity in each core area of expertise need to be tailored to the particular area and driven by needs in the field. While there is a need for predictable and deployable capacities in core areas, arrangements will differ from country to country within the same core area depending on comparative advantage;

(f) Arrangements in specific country situations need to be clear to all. They should be addressed in early planning, taking into account global arrangements and capacities at Headquarters and in the field, and drawing on lessons learned, including in terms of efficiency, accountability and results. They should be reviewed as circumstances evolve. Such clarity will also enable donors to direct their support, on the advice of United Nations leaders in the field, to the appropriate implementing entity, avoiding overlap and helping to fill gaps by directing investment to underfunded areas.

56. I have asked the Chair of the Steering Committee, whose members represent entities from across the United Nations system, to make such an approach a priority for the work of the Committee over the coming months, beginning with a review of the areas identified by the Senior Advisory Group as having critical capacity gaps and drawing on the focal points proposed by the Group:

(a) In the area of basic safety and security: disarmament and demobilization, police and security sector reform and governance;

(b) In the area of justice: corrections, criminal justice and judicial and legal reform;

(c) In the area of inclusive political processes: political party development and public information;

(d) In the area of core government functionality: aid policy and coordination, legislative branch and public financial management;

(e) In the area of economic revitalization: employment generation, natural resource management and private sector development.

57. The Steering Committee should assess any critical gaps beyond those already identified by the Senior Advisory Group. I intend to assess progress after one year and report back to Member States.

V. Financial and operational agility

58. In volatile post-conflict situations, time is of the essence in efforts to build capacity, to avoid the risk of relapse and to deliver critical peace dividends. The need for operational and financial agility to adapt to changing circumstances is increasingly understood as essential for effective international support. The Senior Advisory Group rightly draws attention to three areas in which it considers the United Nations can make further improvements: the capacity of missions to redeploy resources as needs change; using the entity best equipped to implement mandated tasks, based on the principle of comparative advantage; and facilitating the flow and timeliness of resources.

59. Nimbleness is essential in the international response to the needs of post-conflict countries, and in particular to the ability of the United Nations to support the capacity of the State to deliver early progress in key areas such as security, justice and basic services. My Special Representatives have a responsibility and opportunity to facilitate this beyond the resources they manage as heads of mission, in helping to ensure the congruity, complementarity and sequencing of international support for State-building and peacebuilding.

60. Operational and financial agility is particularly important with respect to mission design and budget at start-up and immediately thereafter. The basic mission design and initial budget is prepared, as the Senior Advisory Group points out, in fluid circumstances when knowledge of local requirements and capacities is limited. In keeping with this, the initial mission plan should be understood as preliminary. It was to acknowledge the uncertainty that prevails in this early phase that I proposed for the initial year of peacekeeping operations a standardized funding model, which the General Assembly has approved.[19] I intend to refine the model further to provide explicitly for subsequent changes by my Special Representatives in the mix of civilian capacity, so as to take advantage of nascent national capacity or to access expertise not readily sourced from within the United Nations.

61. The need to adapt to changing needs and circumstances continues throughout the life of a mission. Assessed budgets for field missions are planned 10 to 11 months before the start of the financial year and set out detailed information on all the envisaged inputs 10 to 24 months into the future. In reality, requirements change, especially in the early period after conflict. My Special Representatives need the ability to make some changes accordingly, including the ability to use the resources associated with vacant posts and positions, if necessary, to meet emerging priorities. A variety of practices are used by Governments and international organizations in addressing such contingencies, such as enhanced delegation to the field linked to risk management and accountability. While the United Nations has already taken similar measures, there may be more to be learned from assessing the applicability of those approaches to United Nations field missions.

62. Current funding arrangements provide some limited scope to adapt to changing circumstances. For example, the budget cycle for peacekeeping operations is annual, rather than biennial, and the appropriation structure reflects the understanding by the General Assembly of the need to enable the shifting of resources. Further, in line with the actions set out in "Renewing the United Nations: a Programme for Reform"

[19] See General Assembly resolution 65/289.

(A/51/950) concerning the delegation of maximum authority to line managers, administrative measures were taken within the Secretariat in 2002 to enhance the authority of peacekeeping operations in the management of resources within the three major categories of expenditure: military and police, civilian personnel and operational costs.

63. I intend to explore ways of further improving how we work within the current regulatory framework, while ensuring the necessary transparency and accountability for decisions made in the field. In order to ensure that senior managers are fully cognizant of the scope and procedures for adjustments during the implementation of an approved budget, we will ensure that training for senior leaders addresses this issue and that heads of field missions, programme managers and directors of mission support receive the same information.

64. I also intend to explore the possibility of making improvements in the presentation of information in proposed budgets for peacekeeping operations, so as to provide a more integrated and transparent display of the resources related to civilian capacity, which will be one of the three main categories of expenditure. Resources for civilian capacity would thereby be more clearly seen by the General Assembly and more readily deployed, or redeployed, as required by the mission.

65. The Senior Advisory Group also noted that mission design and budgets do not necessarily provide for implementation by those entities with a comparative advantage to perform the function. I shall issue appropriate guidance to heads of field missions and planners to apply the principle of comparative advantage in recommending how to go about discharging a mandate. The use of other United Nations actors, for example, to discharge mandated and budgeted functions for which they are well equipped, can offer practical advantages, including engagement with an entity often present in the country or area before a mission deploys and likely to be present after the mission leaves. Cooperative or joint planning, such as the development of an integrated strategic framework, should help to determine the comparative advantages of United Nations actors in the field. My priority will be to strengthen the ability of United Nations entities to plan, cooperate and work together in critical post-conflict situations.

66. The recommendations of the Senior Advisory Group also address the gaps in the timely availability of funding that delay the start of critical peacebuilding tasks. Pointing to the differences in funding streams that support implementation of the mandate and the perceived lack of flexibility in their use, the Senior Advisory Group makes a number of interrelated recommendations: that field missions be able to provide the necessary programmatic funds from assessed budgets when civilian capacities within missions have the comparative advantage to implement a mandated task; that voluntary contributions to support civilian capacities within missions be facilitated by reducing the overhead charged by mission trust funds; and that the agencies, funds and programmes that have not already done so consider measures to improve their rapid-response financing capacity.

67. Proposals for United Nations missions to carry out programmatic activities with assessed funding are not new; the joint United Nations community violence reduction programme supported by the United Nations Stabilization Mission in

Haiti, UNDP and others is one example.[20] In some cases, due to its presence and capacities, the mission can and should initiate an activity for a mandated function for which the voluntary funds are not available or have not yet been mobilized. Such measures should be assessed in the light of comparative advantage in that context and the work carried out by other actors, while respecting the fundamental competencies and mandates of United Nations entities. As always, the point of departure for the inclusion of a resource requirement in a proposed budget and its subsequent consideration by the General Assembly is the mandate.

68. With respect to encouraging voluntary contributions to peacebuilding in the immediate aftermath of conflict to complement work done by missions through assessed budgets, the Senior Advisory Group recommends that overheads charged by the Secretariat be aligned with the 7 per cent applied to multi-donor trust funds. The appeal of this idea can be readily understood from the standpoint of reducing competition among entities based purely on overhead rates. This is nonetheless a complex issue which needs to be examined from the standpoint of the Organization as a whole, in the context of cost recovery policies and arrangements for the United Nations. A central premise of long-standing policy is that core resources should not subsidize the activities of non-core resources.

69. An internal review of existing practices, which date from 1980, commenced in late 2010. This review is intended to contribute to an updated perspective of extrabudgetary funding in the financial architecture of the United Nations. It will clarify what costs are to be recovered and the means for doing so, and consider how the application of a cost-recovery policy can take account of partnerships and contributions in support of mandated tasks, in addition to contributions aimed at providing services for others. It will also examine the scope for aligning United Nations practices with those of other United Nations entities. This review is expected to be completed by the first quarter of 2012. I intend to keep the General Assembly informed of progress in this area.

70. The Senior Advisory Group also recommended that access for the agencies, funds and programmes to rapid-response financing should be improved, drawing on innovations at WFP and UNDP. I urge Member States to examine such mechanisms and to accelerate the availability of financing for recovery, transition and development for United Nations agencies, funds and programmes, so as to reduce financing gaps, especially in critical post-conflict settings.

VI. Conclusions and observations

71. **It is widely agreed that the international community and the United Nations in particular, can and must do better at providing rapid, effective civilian capacities to conflict-affected countries. Those States themselves are calling for change. In the context of the International Dialogue for Peacebuilding and Statebuilding, the g7+ grouping[21] has proposed "a new deal to deliver international assistance to fragile States which generates results that**

[20] Other mandated areas that have dedicated programmatic funds are disarmament, demobilization and reintegration, public information, mine action and quick-impact projects.

[21] The g7+ is an open group of countries experiencing or emerging from conflict established in 2008 and comprising Afghanistan, Burundi, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Haiti, Liberia, Nepal, Solomon Islands, Sierra Leone, South Sudan and Timor-Leste.

are aligned with peacebuilding and statebuilding objectives, is more transparent, flexible and effective, and strengthens (rather than duplicates) national and local capacities and institutions".[22]

72. **The Senior Advisory Group made valuable suggestions for how to do this. Their report covers a wide range of interconnected issues, all of which have a bearing on how we find and deploy civilian capacities. I have also listened closely to the views of Member States in the General Assembly, the Peacebuilding Commission and the Security Council. I welcome the engagement of Member States and their support for a focus on national needs and priorities and for a demand-driven response to the recommendations in the report.**

73. **These challenges apply to more than just the United Nations, but since the United Nations leads or coordinates much international assistance in conflict-affected countries, we have a particular responsibility to take action. In the present report, I set out some early priorities for action. In taking them forward, I have asked the Chair of the Steering Committee to ensure that country-specific task forces, mission leadership and United Nations country teams are fully engaged. Their involvement will help to identify opportunities for testing ideas and approaches, particularly in countries with new missions or existing missions with new mandates (such as in Côte d'Ivoire or South Sudan), as well as in non-mission settings in the aftermath of conflict or crisis.**

74. **I consider it a priority to make progress in the areas within my own authority or that of the United Nations executive heads. However, this is a collective enterprise, which must involve Member States, the international financial institutions and the wider group of peacebuilding stakeholders — civil society, academia and the private sector. The approach therefore emphasizes the development of proposals in partnership with others. I am grateful for the supportive engagement of the Peacebuilding Commission. I shall rely on its continued involvement and that of the consultative group of Member States, particularly in the proposed dialogue with Member States to analyse the supply and demand for particular capacities. The expertise of those leaders who have grappled with civilian capacity challenges at Headquarters and in the field is of great value, and I shall continue to draw upon the experience of the Senior Advisory Group. Finally, efforts within the United Nations must take account of other initiatives, in particular through the International Dialogue on Peacebuilding and Statebuilding, the g7+ and the operationalization of the *World Development Report*.**

75. **The present report focuses on what the United Nations can do now, but also looks beyond to broader partnerships and ahead to future steps. I intend to report back to Member States in 2012 on progress and on further initiatives that may be needed, including any which may require decisions by the General Assembly. Meanwhile, I shall depend upon the support and cooperation of all our partners in working towards our common objectives.**

[22] See the Monrovia road map agreed at the second International Dialogue on Peacebuilding and Statebuilding, 15-16 June 2011, available at http://www.oecd.org/dataoecd/23/24/48345560.pdf.

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Item 67 (a) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance

Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur of the Human Rights Council on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, on the implementation of General Assembly resolution 65/199.

* A/66/150.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 65/199

Summary

The present report to the General Assembly is submitted pursuant to resolution 65/199 on the inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in which the Assembly requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to prepare a report on the implementation of the resolution, based on the views collected from Governments and non-governmental organizations.

Following a brief introduction on the content of resolution 65/199, the Special Rapporteur summarizes the contributions sent by 14 States on the implementation of the resolution, as well as views sent by five non-governmental organizations and the Office of the United Nations High Commissioner for Refugees pertaining to the issue raised in the resolution. The Special Rapporteur then puts forward a number of conclusions and recommendations.

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I. Introduction

1. In its resolution 65/199, the General Assembly, alarmed at the spread in many parts of the world of various extremist political parties, movements and groups, including neo-Nazis and skinhead groups, as well as similar extremist ideological movements, noted with concern, in paragraph 6, the increase in the number of racist incidents in several countries and the rise of skinhead groups, which had been responsible for many of those incidents, as well as the resurgence of racist and xenophobic violence targeting members of ethnic, religious or cultural communities and national minorities, as observed by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in his latest report (see A/65/323).

2. The General Assembly reaffirmed, in paragraph 7 of the resolution, that such acts might be qualified to fall within the scope of activities described in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and that they might represent a clear and manifest abuse of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression within the meaning of those rights as guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

3. In paragraph 9, the General Assembly stressed that such practices fuelled contemporary forms of racism, racial discrimination, xenophobia and related intolerance and contributed to the spread and multiplication of various extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and emphasized, in paragraph 10, the need to take the measures necessary to put an end to those practices.

4. In the context of the foregoing, the General Assembly, in paragraph 22, recalled the request of the Commission on Human Rights, in its resolution 2005/5, that the Special Rapporteur continue to reflect on the issue, make relevant recommendations in his future reports and seek and take into account the views of Governments and non-governmental organizations on that issue. In paragraph 23, it requested the Special Rapporteur to prepare, for submission to the General Assembly at its sixty-sixth session and to the Human Rights Council, reports on the implementation of the resolution based on the views collected in accordance with the request of the Commission on Human Rights, as recalled by the Assembly in paragraph 22 of the resolution.

5. In accordance with practice established in previous reports, the present report summarizes information received on activities undertaken by Member States pursuant and relevant to resolution 65/199. In preparing the report, the Special Rapporteur requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to send a note verbale on 11 May 2011 to Member States requesting information on the implementation of the resolution, to be received by 21 June 2011. The Special Rapporteur also requested the Office to send a letter on 11 May 2011 to non-governmental organizations requesting their views pertaining to the issues raised in the resolution, to be received by 21 June 2011.

6. Following the request for contributions, submissions had been received by 1 August 2011 from 14 Member States, namely, Andorra, Azerbaijan, Bahrain, Costa

Rica, Cuba, the Dominican Republic, Lebanon, Mauritius, Morocco, Portugal, the Russian Federation, Serbia, Spain and Turkey. As at 1 August 2011, the Special Rapporteur had received contributions from five non-governmental organizations, namely, the Bahá'í International Community, the Child Care Consortium, the European Network against Racism, Human Rights Watch and the United Nations Educational, Scientific and Cultural Organization (UNESCO) Centre of Catalonia. The Office of the United Nations High Commissioner for Refugees (UNHCR) also submitted its contribution. The information received is summarized in the present report; the original text of the contributions is available for consultation at the Secretariat.

II. Contributions received from Member States

A. Andorra

7. The Government indicated that the International Convention on the Elimination of All Forms of Racial Discrimination had entered into force in Andorra on 22 October 2006. The Government was preparing its first report on the implementation of the Convention. Furthermore, Andorra regularly received visits from the European Commission against Racism and Intolerance of the Council of Europe (ECRI). In 2007, following the visit of the Commission to Andorra, a report was published which contained some recommendations. The report is available online from www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Andorra/Andorra_CBC_fr.asp. The next assessment visit of ECRI to Andorra is scheduled from 14 to 16 September 2011.

B. Azerbaijan

8. In its reply, Azerbaijan reaffirmed its commitment to the provisions of resolution 65/199. Reference was made to the "National Security Conception of the Republic of Azerbaijan", adopted on 23 May 2007, which provides a number of provisions safeguarding national and religious tolerance.

9. Azerbaijan indicated that awareness-raising measures had been taken, in accordance with the National Action Plan on the Protection of Human Rights, for strengthening intercultural dialogue and interfaith cooperation, protecting and further developing the cultural heritage of ethnic minorities, prohibiting discrimination and promoting a culture of peace and tolerance in the districts and regions of Azerbaijan. In that respect, Azerbaijan further noted that awareness-raising measures had been taken in the field of religious tolerance among the population. Since 2007, 474 seminar-trainings had been held in various towns and regions of the country.

10. The Government stressed that all propaganda activities that promoted and incited racial and religious discrimination were prohibited in Azerbaijan. In that respect, the State Committee on Work with Religious Organizations of the Republic of Azerbaijan had been established to deal with the implementation of governmental policy in the field of religious activities in the country and to supervise the implementation of provisions of the legislation on religious organizations.

11. It was noted that an art festival of national minorities, "Azerbaijan — our native land", was held every two years. In its reply, the Government emphasized that Azerbaijan attached particular importance to human rights education. In that respect, the Ministry of Education of Azerbaijan regularly organized events aimed at strengthening respect for people representing different cultures, ethnicities and religions.

12. Finally, the Government stressed that in 2009, Azerbaijan had joined the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. A special action plan was being prepared in that regard. Moreover, the "Cultural diversity is our cultural identity" project would be implemented in 2011. In that context, various events would be organized, including seminars on the theme of national cultural solidarity in regions throughout the country, training for cultural workers, preparation of research work concerning the state of intercultural dialogue, publication of booklets and brochures reflecting the cultural diversity of the country, and exhibitions, concerts, competitions and other similar events.

C. Bahrain

13. In its reply, the Government referred to legislation which protects freedom of religion and belief. Bahrain noted that constitutional rights were guaranteed to all without discrimination, as provided in article 8 of the Constitution. Article 22 of the Constitution specifically protects freedom of religion. Reference was also made to the Penal Code. Article 172 of the Penal Code prohibits incitement to hatred against a group of people or its members; article 309 prohibits denigration or defamation of a religious community; and article 311 prohibits the printing or publishing of books that offend religion or religious symbols or traditions.

14. The Government indicated that Bahrain had taken legislative measures to prohibit the publication of racist thought and to counter discrimination and related violations of religious values and the constitutional principle of equality. For example, Law No. 47 (2002) regulating the media, printing and publishing, provided for freedom of expression as long as it did not provoke division or sectarianism; and Law No. 58 (2006) provided for the protection of society from terrorist activities and the strengthening of penalties for crimes related to religion if perpetrated through terrorist activities.

D. Costa Rica

15. In its reply, Costa Rica indicated its commitment to carry out the "Action Plan against Racism and Racial Discrimination". It was noted that the elaboration of the Action Plan was an inclusive and participative process, in which all social actors were included. The Government was aware that the fight against racism and racial discrimination was not an isolated duty of civil society, but it required a collective effort and responsibilities by the authorities. The Action Plan would become an important base and the focal point of human rights programmes in the country and would lead to the creation of the Inter-Institutional Commission for Human Rights. The Inter-Institutional Commission for Human Rights will be the body which takes forward the process of the elaboration and implementation of the National Action Plan.

16. With respect to measures taken to combat racism, racial discrimination, xenophobia and related forms of intolerance, the Government referred to the reinforcement of the National Plan against Racism and Racial Discrimination, the establishment of the Afro-Costa Rican National Commission in celebration of the International Year for People of African Descent, and the creation of the African Descent Studies Commission. Regarding measures taken to protect the rights of indigenous people, the Government made reference to the Indigenous Law of 1977, the existence of the National Commission for Indigenous Affairs, the establishment of the Indigenous Education Department in the Public Education Ministry, and the creation of the Indigenous Issues Prosecutor.

17. It was indicated that the Law on Migration and Aliens, which had been in effect since March 2010, guaranteed respect for the principle of equality and non-discrimination for migrant people and refugees. It contributed to generating tolerance and respect in the country and promoting the fight against xenophobia.

18. At the regional level, the Government noted that Costa Rica had been actively promoting the Inter-American Convention against Racism and All Forms of Discrimination and Intolerance and contributing to the fight against racism, racial discrimination, xenophobia and related forms of intolerance in the framework of the regional body.

19. In the context of the tenth anniversary of the adoption of the Durban Declaration and Programme of Action, the Government indicated that on 21 March 2011, the International Day for the Elimination of Racial Discrimination had been commemorated in the Ministry of Foreign Affairs and Worship by recalling the celebration of the tenth anniversary of the Durban Declaration and Programme of Action.

E. Cuba

20. In its reply, Cuba noted its concern regarding the rise in crime and incitement to hatred based on race, nationality, ethnicity and religion at the hands of groups and political parties with racist, discriminatory, xenophobic and anti-migrant platforms, fundamentally in developed countries. It stated that all countries should reject and ban any ideologies, parties and political extremist, segregationist and nationalist organizations which promoted racism and xenophobia, and that organizations and parties of that kind should be banned by law in line with international legislation.

21. Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and article 20, paragraph 2, of the International Covenant on Civil and Political Rights endorse the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination. Cuba reiterated the need to strengthen international cooperation in the promotion of the immediate withdrawal of all reservations to article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and the consolidation of a universal prohibition on propaganda of a racist, nationalist or xenophobic nature, as well as any association based on those concepts.

22. Cuba expressed particular concern regarding the increase in attempts to revise the history of the Second World War, which negatively impacted the development of fair and mutually respectful dialogue between States as well as international

relations. Cuba noted the historical significance of the sixty-fifth anniversary of the end of the Second World War for peace-loving people and governments and affirmed that that event contributed to the consolidation of the ideals of peace and the deepening of understanding and trust between peoples. It noted that the new international system created after the end of the Second World War was one established on the basis of mutual respect, equal sovereignty of States, the rejection of the use of force, non-intervention in internal matters and fundamental principles which served as the basis of the United Nations. Cuba highlighted that those principles had constituted a legal and moral barrier against the attempts of powerful countries, in particular the United States of America, to impose their will on peoples and governments in the rest of the world.

23. Cuba indicated concern regarding the monopoly of the transnational media controlled by the industrialized North, which it considered presented three quarters of the world's population with only one view of the world and the events happening in it. Cuba also expressed its concern regarding the irresponsible use of the Internet as a means of disseminating propaganda. Cuba emphasized the need to strengthen international cooperation in the promotion of the elaboration of codes of ethics regarding the behaviour of international media, and especially regarding the operation of the Internet.

24. Cuba highlighted its concern in relation to the proliferation of discriminatory laws and policies regarding migrants, the adoption of antiterrorist legislation and the promotion of racist and xenophobic practices in the context of the so-called "war on terror" that it considered allowed for arbitrariness. Cuba stated that acts suffered by the migrant populations in industrialized countries constituted practices which exacerbated racism, discrimination and violations of their human rights such as the "Return Directive" and Law 1070 of the State of Arizona.

25. Cuba stated that since 11 September 2001, the incitement to racial and religious hatred had been exacerbated and had become an ideological tool used by certain developed countries, primarily the United States of America, in the name of the "war on terror". Cuba indicated that the attempts of the Government of the United States to impose a world-dominating dictatorship, under the guise of a supposed "war on terror", had negative and serious repercussions for the majority of the world's population, particularly for Arab and Muslim peoples, including those living in the United States. Furthermore, Cuba stated that the United States and European countries involved in the war on terror had established the practice of projecting a negative image of Islam through the media.

26. Cuba reiterated the need to strengthen international cooperation in the consolidation of the work in combating racism, xenophobia and all forms of discrimination, in particular within OHCHR.

F. Dominican Republic

27. In its reply, the Dominican Republic indicated that discrimination continued to hinder the full realization of human rights. Article 39 of the Constitution guaranteed equality for all and effective protection against discrimination. The Government noted that there was a close link between racism, racial discrimination, xenophobia and different forms of intolerance, on the one hand, and marginalization and social exclusion of vulnerable groups on the other.

28. In the Dominican Republic, all citizens were equal before the law. Equality was not limited to the legal or political framework but it was also extended to the social sphere. Article 11 of the Criminal Procedure Code establishes that judges and the public prosecutor's office should take into account the particularities of each case, and that they cannot base their decisions on the grounds of nationality, gender, race, religion or belief, political ideas, sexual orientation, economic or social position or any other condition with discriminatory implications.

29. The Government indicated that the challenges ahead were daunting and they demanded the determined action and the cooperation not only of the judicial instances but also of civil society. In accordance with Supreme Court resolution 1920 of 2003, the broad range of human rights was within the realm of the Constitution; therefore its application was of capital importance for members of the judiciary.

30. The elimination of all forms of existing discrimination contributed to maintaining society economically active and reinforced strategies which offered opportunities to migrants and other vulnerable groups. The judiciary of the Dominican Republic worked tirelessly to promote and maintain the ideals of equality, equity and non-discrimination.

G. Lebanon

31. In its reply, the Government indicated that the Constitution and national legislation provided the framework for the situation of migrant workers in Lebanon. Lebanon was also bound by relevant provisions of the International Covenant on Economic, Social and Cultural Rights, for example, articles 7 and 9. Moreover, specific provisions were set out in the Labour Law (although domestic workers were not covered by it) and the Law regulating the work of foreigners of 1963, as amended.

32. The Government stressed that Lebanese law did not contain any provisions discriminating against foreigners. It was indicated that there were two categories of migrant workers in Lebanon, those who worked in households or organizations and "artists", which refers to women working in bars or nightclubs. With respect to the second group, namely, the "artists", the existing immigration rules did not always provide sufficient protection of their rights.

33. Lebanon was studying the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in addition to the International Convention on the Elimination of All Forms of Racial Discrimination.

34. The Government indicated that there were several organizations that worked to improve the situation of foreigners. However, owing to the lack of appropriate regulation of the work of domestic workers, a number of violations had occurred. The fact that the level of pay of domestic workers depended on their nationality could also be considered discrimination, in addition to the retention of their passports by their employers and the physical and sexual violence they might face in the employing families. While the victims might in principle lodge a complaint with the court, their weak position and fear of their employers often prevented them from doing so.

II. Mauritius

35. In its reply, Mauritius indicated that section 3 of its Constitution provided that certain human rights and fundamental freedoms should exist without discrimination on the grounds of race, place of origin, political opinions, colour, creed or sex, but they were subject to respect for the rights and freedoms of others and for the public interest. Those rights and freedoms included the right to life, liberty, security of the person and the protection of the law; freedom of conscience, expression, assembly and association and freedom to establish schools; and the right of individuals to protection for the privacy of their home and other property and from deprivation of property without compensation. Moreover, section 16 of the Constitution specifically provided for protection from discrimination on the grounds of race, caste, place of origin, political opinions, colour, creed or sex. Reference was also made to section 11 of the Constitution, which provided for the protection of freedom of conscience.

36. Mauritius provided information about the National Human Rights Commission, which was empowered to inquire into complaints and review safeguards for the protection of human rights and factors or difficulties which inhibited the enjoyment of human rights. It was stated that, in addition to the normal channels of complaint through the police authorities, citizens might have recourse to the Office of the Ombudsman. Minor petitions relating to human rights might be forwarded to the Office of the Attorney General.

37. The Sex Discrimination Division of the National Human Rights Commission was empowered to receive and inquire into any written complaints regarding alleged infringements of the Sex Discrimination Act and to make recommendations in various fields, including employment and education.

38. Mauritius noted that the Equal Opportunities Act, which was not yet in force, covered the different aforementioned grounds of discrimination as well as age, pregnancy, mental and physical disability and sexual orientation in various areas. The Act also provided for the establishment of an equal opportunities commission and an equal opportunities tribunal.

39. The Truth and Justice Commission Act came into operation in 2009, on the day commemorating the abolition of slavery in Mauritius. The Act provided for the establishment of the Truth and Justice Commission, which had been constituted and consisted of Mauritian historians, academics and social workers.

40. It was stated that under the Criminal Code there were offences pertaining to discrimination on grounds of race or creed in general. In that respect, Mauritius referred to different sections of the Criminal Code, including section 282 relating to the offence of "stirring up racial hatred".

41. Finally, the Government of Mauritius indicated that the International Criminal Code Bill, which had already undergone a first reading in Parliament, was scheduled to undergo a second reading.

I. Morocco

42. In its reply, Morocco highlighted the efforts made by the departments of Justice, National Education and Culture and the Royal Institute for the Amazigh Culture in the implementation of General Assembly resolution A/65/199.

43. The Government stated that the Criminal Code prohibited discrimination based on the grounds of national or social origin, colour, sex, family situation, health, political opinion, labour union membership, as well as ethnicity, nationality, race and religion. Those provisions applied to both physical and moral persons. Morocco indicated that under Law No. 36-04 on political parties, political parties established on the basis of religion, language, ethnicity or region, or more generally on any discriminatory basis contrary to human rights standards, should be declared null and void. A reference was also made to the Law regulating the Entry and Stay of Foreigners in Morocco.

44. Morocco further highlighted the provisions of the new draft Constitution, which was submitted to referendum on 1 July 2011. In that regard, the Government stated that article 23 prohibited any incitement to racism, hatred and violence. The draft Constitution also provided that genocide, crimes against humanity, war crimes and all grave and systematic human rights violations were punishable by law. Article 30 stipulated that foreigners enjoyed the fundamental freedoms recognized to Moroccan citizens in conformity with the law.

45. The Ministry of National Education had elaborated a strategy which aimed at integrating the values of citizenship and human rights in schools. In that regard, the Government mentioned initiatives such as human rights training, regional observatories on violence in school, and the commemoration of national and international days, for human rights, history, tolerance, women and migrants. Morocco also stated that the Government had developed a comprehensive and integrated approach for the integration of a culture of human rights and citizenship in educational curricula as well as in the training courses of teachers. Reference was also made to the Sub-Commission of Values attached to the Commission of Evaluation and Validation, which assessed the content of educational curricula with respect to human rights and democratic principles such as tolerance, equality, equity, dignity, the right to difference, intercultural dialogue, international humanitarian law, and the fight against all forms of discrimination, including discrimination based on race, religion, ethnicity and sex. Measures taken to integrate a gender dimension into the educational policy and ensure equality in the access to education between girls and boys were further underlined.

46. Morocco stated that, in line with the 2008 Convention signed between the Ministry of National Education and the Consultative Council for Human Rights (now the National Council for Human Rights), a day of study had been organized with the support of the International Centre for Transitional Justice in 2010. The objective of the meeting was to develop a reflection on the issue of transitional justice in education. Recommendations were made in that context.

47. The Royal Institute for the Amazigh Culture had developed a strategy for the promotion of the cultural and linguistic rights of the Amazigh. Reference was made in that regard to the integration of the Amazigh into the education system; the media (press, radio and television); the organization of cultural manifestations as well as the support provided to the associations that promoted the Amazigh culture. A

specific reference was also made to the constitutional guarantee provided to the culture and language of the Amazigh people in the context of the constitutional reform in Morocco.

48. Finally, Morocco highlighted the key measures taken by the Ministry of Culture in the promotion of a culture of human rights and the raising of awareness about the importance of history and memory/remembrance.

J. Portugal

49. In its response, Portugal indicated that two national plans, namely the National Plan for Equality, Citizenship and Gender and the National Plan for the Integration of Immigrants, had been adopted to combat discrimination.

50. Portugal stated that article 13 of its Constitution prohibited discrimination based on ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. Article 15 of the Constitution recognized the same rights and duties for foreigners, stateless persons and immigrants as Portuguese citizens. It was stated that racist organizations, as well as organizations that "display a fascist ideology", were prohibited by article 46, paragraph 4, of the Constitution. Reference was also made to articles 59, 8 and 16 of the Constitution.

51. According to the Criminal Code of Portugal, a racist act motivated by discrimination based on race, religion, gender or sexual orientation could be considered a punishable crime. Reference was made to articles 240 and 246 of the Criminal Code in that context. Racial motivation was considered an aggravating circumstance in crimes of homicide and offences to physical integrity. Furthermore, according to article 71 of the Criminal Code, discriminatory motivation was considered an aggravating factor by judges when determining the measure of penalty.

52. It was stated that other sanctions, such as fines and accessory penalties, could be imposed in cases of acts of discrimination. Complaints of such acts could be submitted to the Commission for Equality and against Racial Discrimination, which was chaired by the High Commissioner for Immigration and Intercultural Dialogue.

53. The Labour Code establishes a general framework for equal treatment in employment and occupations. The Legal Framework of Public Employment Labour Contract provides equal treatment in the public and private sectors. Under the Administrative Procedural Code, public authorities or institutions are forbidden to conduct discriminatory acts towards citizens. Complaints regarding such kinds of violations may be submitted to the Ombudsman. The Television Law provides that no elements of a programme shall incite to hatred, racism or xenophobia.

54. Portugal also referred to the Asylum Law, the Organic Law, the Television Law, the Publicity Code and the Law on preventive and punitive measures to be taken in case of violence associated with sport.

55. In order to fight against racism, human rights training was provided to all law enforcement officials, including magistrates, members of the police forces and public servants. Moreover, Portugal indicated that human rights issues had been included in the curricula of all professional training.

56. Finally, Portugal indicated that it had been cooperating with and contributing to the work of relevant regional and international bodies that combat racism, racial discrimination, xenophobia and other forms of intolerance.

K. Russian Federation

57. In its reply, the Russian Federation indicated that it was an integral part of its national governmental policies to adopt measures aimed at preventing and combating activities which incited social, racial and religious hatred, and at settling ethnic conflicts. The Government noted that the Ministry of Regional Development had consistently developed its activities aimed at promoting intercultural dialogue and combating racism, discrimination and intolerance in the framework of the governmental national policies. From 2008 to 2010, the Ministry of Regional Development had adopted a number of measures to combat ethnic and religious extremism and to prevent escalation of ethnic conflicts. Those measures had benefited from the assistance of the Office of the Prosecutor-General, the federal authorities, voluntary associations and religious organizations concerned. As part of its official government policy, the Ministry of Regional Development also undertook activities to prevent discrimination and inter-ethnic strife and combat the dissemination of racist ideas. In addition, a number of initiatives had been carried out jointly by the Ministry of Regional Development and other institutions, including awareness-raising campaigns, publications, media projects and sociological research.

58. The Government emphasized that the Advisory Council on the Affairs of Autonomous Ethnic Cultural Organizations held regular meetings to discuss the issue of prevention of extremist and inter-ethnic conflicts. The Advisory Council also addressed issues relating to national legislation in the area of inter-ethnic relations and undertook activities in the framework of implementation of the official national policy of the Russian Federation.

59. With support from the Ministry of Regional Development, a set of activities had been undertaken to raise awareness of the history and culture of different ethnic groups in the Russian Federation and increase the level of ethnic tolerance in society.

60. The Ministry of Education and Science had developed and approved Federal State education standards for primary general and basic general education, based on respect for moral and legal norms, respect for human dignity, and tolerance of other cultures. Cooperation had been fostered with various stakeholders in the framework of the project called "Implementation of measures on organizing systemic cooperation of educational institutions of general and professional character by the authorities, civil society and independent institutes with a view to preventing extremism among students". Moreover, the Government noted that a project called "Multicultural educational model as a basis for building a Russian civic identity among students in general education schools" had been undertaken to promote multicultural education.

61. Pursuant to Presidential decree No. 1316 of 6 September 2008, a department and additional sections had been established within the Ministry of Internal Affairs to combat extremism.

62. The Government indicated that, according to independent experts' evaluation, the level of racist violence and the number of violent crimes committed against foreigners had decreased in the Russian Federation. On 7 February 2011, the President of the Russian Federation had signed the Police Act, which entered into force on 1 March 2011. In accordance with that law, the police were responsible for preventing, detecting and suppressing extremist activities.

63. The Federal Act of 2002 sets out the main legal and organizational mechanisms to counter extremism. Article 1 of the Federal Act defines advocacy of exclusivity, superiority or inferiority on the basis of a person's social, racial, ethnic, religious or linguistic background as extremist activity. Article 282 of the Criminal Code of the Russian Federation criminalizes activities aimed at incitement of hatred on the basis of gender, race, ethnicity, language, origin, religious or social group in public or through the media.

64. The Ministry of Internal Affairs was also involved in combating extremist activities. In order to prevent extremist crimes, the organs of the Ministry monitored closely the political, cultural and sport events likely to generate inter-ethnic and inter-religious tension.

65. On a regular basis, working meetings were organized with the representatives of human rights defenders from the Sova Center for Information and Analysis, the Institute of Human Rights and the Moscow Bureau for Human Rights. Agreement had been reached on ensuring permanent monitoring of the information provided by mass media and the Internet.

66. The Government raised concern that extremist groups increasingly used the Internet to encourage membership among the youth. In that context, a set of measures had been taken by the Ministry of Internal Affairs to eliminate undesirable content which might incite extremism and xenophobia on the Internet as well as other publications, including audio and video materials. The number of prohibited extremist materials had exceeded 800. The Ministry of Internal Affairs worked to ensure the exchange of information among law enforcement agencies as well as among partners abroad through the Group of Eight (G-8) network which comprised more than 50 countries. In conformity with the order of the Ministry of Internal Affairs, a draft law had been prepared "On amendments in certain legislative acts of the Russian Federation", which purported to complete some provisions of the Criminal Code. One proposed amendment provided expressly for criminal responsibility with respect to crimes of an extremist character committed via information and telecommunication networks, including the Internet.

67. Taking into account the fact that many extremist websites were located abroad, the Government noted that the effectiveness of countering extremism depended on close cooperation with the law enforcement agencies of other countries, and called for the elaboration of a unified international instrument in that domain. In the context of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil from 12 to 19 April 2010, the Russian Federation supported the elaboration of a United Nations convention against cybercrime.

68. Finally, the Government raised serious concerns regarding the situation of the Russian-speaking minorities in the Baltic States, including Latvia, Estonia and Lithuania.

L. Serbia

69. Serbia provided information about a decision of the Constitutional Court of the Republic of Serbia. The Court decides that the activity of the National Formation, a clandestine political party (political organization), shall be banned in conformity with the Constitution; the registration of the programme goals and/or the name of the organization shall be prohibited; the organization shall be prohibited from pursuing activity, promoting and spreading its programme goals and ideas, and State and other authorities and organizations shall be obliged to take measures within their competences and powers for the purpose of implementing this decision.

M. Spain

70. In its reply, Spain indicated that its Government had prioritized policies relating to the promotion of equality and the prevention of discrimination since 2004. The right to equality for all was enshrined in article 14 of the Spanish Constitution. Article 9.2 provided that public bodies had a positive obligation to promote equality. The Ministry of Health, Social Policy and Equality had been established for proposing and developing the Government's policy on equality and the prevention and elimination of all types of discrimination based on any social or personal conditions or circumstances.

71. The Council for the Promotion of Equal Treatment and the Prevention of Discrimination on the Basis of Racial or Ethnic Origin had taken on responsibilities of providing independent assistance to victims of discrimination, processing complaints, conducting studies and formulating recommendations on equal treatment and the prevention of discrimination based on racial and ethnic origin.

72. The first Action Plan for the Development of the Gypsy Population 2010-2012 had been approved by the Council of Ministers. That Action Plan aimed to promote new methods and forms of participation and social development for the gypsy population and to serve as an instrument to improve its social situation and living conditions.

73. In terms of legislative measures, Spain referred to the anti-discrimination provisions set out in its Penal Code since 1995, and the measures introduced in 2003 prohibiting discrimination based on ethnic or racial origin in relation to education, health, social services and benefits and housing. Legislative measures were in place prohibiting discrimination against foreigners and the formation of political parties with discriminatory motives.

74. Classes on the rights of citizens and human rights had been introduced at primary and secondary education levels. Legislative measures had been adopted to combat racism in sport, which was regulated by the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport. A law regulating the prevention of such discrimination in sport had been passed in 2010.

75. The Government indicated that the Bill on Equal Treatment and Prevention of Discrimination had been passed by the Council of Ministers on 27 May 2011. That legislation had the objectives of preventing and eradicating any type of discrimination and protecting victims.

76. The legislation guarantees the right to equal treatment by defining protective and reparatory measures in line with recent jurisprudence. It provides for the prevention of discrimination, facilitates the adoption of preventive measures where discrimination takes place via electronic means or computer networks, and sets out sanctions and penalties for breaches of its terms as well as compensation to victims. It also provides for the establishment of a State Authority for Equality and the Prevention of Discrimination as an independent entity, which would provide assistance to those affected by discrimination.

77. Finally, Spain reaffirmed its commitment to the elimination of discrimination and its endeavour to guarantee the right to equal treatment and the prevention of discrimination.

N. Turkey

78. In its reply, Turkey reaffirmed its commitment to the fight against all forms of discrimination. It was recognized that the main responsibility lay with governments to safeguard and protect the rights of individuals against discriminatory acts and activities.

79. The Government indicated that acts of discrimination were prohibited and criminalized by law in Turkey. The principle of equality was enshrined in the Constitution. Reference was made to article 10 of the Constitution, which guaranteed equality to all individuals without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion or sect, or any such considerations.

80. The concept of citizenship, defined under article 66 of the Constitution, was based on the grounds of legal bonds without any reference to ethnic, linguistic or religious origin. The Government emphasized that non-discrimination among citizens on the grounds of ethnicity, religion or race was the main philosophy of Turkey. Article 10 of the Constitution recognized the same fundamental rights and freedoms between Turkish citizens and foreigners. However, political rights and the right of foreigners to join the public service were restricted in articles 16, 67 and 68 of the Constitution.

81. Turkey noted that positive discrimination for individuals who required social protection had gained a constitutional basis under the title "Equality before the Law" in the amendment to article 10 of the Constitution.

82. The principle of equality is also enshrined in the Civil Code, the Law on Social Services and Child Protection, the Political Parties Law, the Basic Law on National Education, the Labour Law and the Law on Disabled People. Under article 122 of the Penal Code, economic discrimination on the basis of language, race, colour, sex, political thought, philosophical belief, religion, denomination and other reasons is considered a crime. Article 216 of the Penal Code provides for sanctions against incitement to breed enmity, hatred or denigration. Reference was also made to the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts.

83. Turkey indicated that, in addition to judicial remedies, governmental, administrative and parliamentary remedies were also available to individuals who claimed to be subjected to discrimination. The Human Rights Presidency and a

number of Human Rights Boards at provincial and subprovincial levels were entrusted with the task of receiving, examining and investigating allegations of human rights violations, including claims of racial discrimination. Those bodies also had the task of assessing the results of their examinations and investigations, referring the results to the offices of the public prosecutors or relevant administrative authorities, and following up the results. In that context, the Human Rights Inquiry Commission of the Parliament was also mentioned.

84. Finally, Turkey emphasized that a successful fight against all forms and manifestations of discrimination and intolerance required combined efforts at the national and international levels. In that respect, Turkey indicated that it had been actively engaged in the fight against intolerance and discrimination at both the international and regional levels.

III. Contributions received from non-governmental organizations and the United Nations system

85. The Bahá'í International Community, the Child Care Consortium, the European Network against Racism, Human Rights Watch, the UNESCO Centre of Catalonia, as well as the Office of the United Nations High Commissioner for Refugees, provided contributions to the Special Rapporteur in relation to General Assembly resolution 65/199. The main concerns raised by non-governmental organizations and UNHCR include increased racist violence and crimes against, in particular, ethnic and religious minorities and migrants; the lack of adequate data on such violence and crimes; the use of media, including the Internet, to proliferate and promote racist content; the negative impact of media representation of immigrants and minorities on public opinion; incitement to hatred against religious minorities in official discourse and media; and the reluctance by authorities to identify, investigate and register hate crimes in many European countries.

86. The Bahá'í International Community provided information about incitement to hatred, intolerance and violence on the ground of religion against adherents to the Bahá'í Faith, an unrecognized religious minority in the Islamic Republic of Iran, including incitement to hatred against the Bahá'ís in Iranian media and official discourse, increased violence and intimidation, attacks on Bahá'í cemeteries, discrimination against the Bahá'ís in the fields of employment and higher education, and arbitrary arrests and imprisonment of the Bahá'ís.

87. The Child Care Consortium indicated its commitment to support the fight against neo-Nazism, neo-fascism and other violent and extremist ideologies.

88. The European Network against Racism (ENAR) provided information about manifestations of racism and racial discrimination in Europe, including racist violence and crime. It was indicated that Roma, migrants and Muslim and Jewish communities were, in particular, vulnerable to racism and discrimination to different degrees across the European Union. Racist violence was reported to be on the rise in an ever-growing number of States members of the European Union. With regard to legislation, it was stated that the legal frameworks and remedies were insufficient and ineffective in many European countries. Concerns were raised in relation to the reluctance of authorities to identify, investigate and register hate crimes and the lack of adequate data on such crimes. It was indicated that racist violence and crime

remained underreported, under-recorded and under-prosecuted. With regard to the media and the Internet, concerns were raised in relation to the use of the Internet to proliferate and promote racist messages, the depiction of minority groups in the media, and the use of mainstream media by far right parties. ENAR also provided information about good initiatives from civil society, including providing free legal aid to victims of hate crime organizing, educational activities, collecting data on racist crimes, monitoring racially motivated crimes in stadiums, and establishing national associations of intercultural media.

89. Human Rights Watch provided information concerning racist and xenophobic violence and related intolerance in Italy. It indicated that racist and xenophobic violence had not been identified as a serious issue, and the extent of racist violence in Italy had been underestimated. Racist motivation was seen as an aggravating factor that led to heavier penalties in the criminal law of Italy; however, in practice, that provision had been narrowly interpreted by the courts. Concerns were raised regarding the lack of investigation into racist violence and crimes; the failure of bringing to justice those responsible for racist violence and crimes; the lack of systematic specialized training for law enforcement officials; political and public discourse linking immigrants, Roma and Sinti to crime which had helped to create an environment of intolerance; and the impact of negative portrayal of immigrants and minorities, including Roma and Sinti, in media reporting. It was noted that Italy had recently started collecting data on hate crimes. However, the statistics published on hate crimes remained insufficient.

90. The UNESCO Centre of Catalonia provided information about the current trends of contemporary forms of racism, racial discrimination, xenophobia and related intolerance in Catalonia. Those trends included increased xenophobic contents in public and political discourse; an increase in institutionalized practices of Islamophobia and xenophobia that tended to restrict certain rights of concerned individuals; an increase in manifestations of xenophobia in public opinion and the media; and hostilities and discrimination against members of certain groups or religious communities. They also provided information on best practices, including the promotion of religious diversity, publications and awareness-raising tools to fight against racism, racial discrimination and xenophobia; the establishment of international networks providing platforms to share good practices in promoting religious tolerance and experiences in the fight against racism, racial discrimination and xenophobia; and awareness-raising training for youth to combat racism.

91. The Office of the United Nations High Commissioner for Refugees (UNHCR) provided information about practices of racism, racial discrimination, xenophobia and related intolerance against refugees, asylum-seekers and other persons of concern to UNHCR in Europe, Asia and the Americas. It indicated that the aforementioned individuals often found themselves swept into the broader net of anti-immigrant sentiment and were thus affected by intolerance, discrimination, exclusion and xenophobia. It raised serious concerns about the prevalent climate of intolerance, xenophobia and racism.

92. The UNHCR offices in western, eastern and central European countries had identified xenophobia as one of the key challenges to integration in Europe. It was indicated that practices that contributed to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance in Europe could be categorized into four types. The first type of practice was identified as political

parties with an anti-foreign or xenophobic platform. It was stressed that, in most cases, the impact on the immigration and asylum policy of the far-right political parties often depended on the willingness of the mainstream parties to cooperate. The second type of practice was media reporting and public opinion or attitude. Despite the fact that media could be a positive agent of change, media reports might also reflect the tendencies in society in relation to xenophobia and racism and could be seen as a barometer of those trends. The third type referred to other groups with an anti-foreign or xenophobic and/or racist background. In addition, the fourth type of practice identified was racist or xenophobic incidents, including hate crime. Issues of racism, racial discrimination, xenophobia, hate crimes and other forms of related discrimination were of growing concern to most UNHCR offices. It was highlighted that the increase in the number of racist incidents and the resurgence of racist and xenophobic violence targeting members of ethnic, religious or cultural communities and national minorities was indisputable.

93. With respect to the situation in Asia, it was indicated that relatively few instances of direct manifestations of racism, racial discrimination, xenophobia or related intolerance targeting UNHCR persons of concern had been reported in the region. However, in most countries, there were general shortcomings in relation to the legal framework protecting the rights of asylum-seekers, refugees and stateless persons, which more indirectly affected their access to rights and made them more vulnerable to various forms of abuse.

94. In the Americas region, there was little evidence of certain groups or political movements which specifically targeted refugees and asylum-seekers.

IV. Conclusions and recommendations

95. **The Special Rapporteur is grateful to all States that shared information on their activities undertaken pursuant and relevant to General Assembly resolution 65/199. He also welcomes information provided by non-governmental organizations and the Office of the United Nations High Commissioner for Refugees pertaining to the issues raised in the resolution. Such information is important for the sharing of experiences and best practices in the fight against extremist political parties, movements and groups, including neo-Nazis and skinhead groups, as well as extremist ideological movements. The Special Rapporteur would like to reaffirm the importance he attaches to the cooperation with Governments and non-governmental organizations in the implementation of his mandate. In this regard, the Special Rapporteur would like to recall Human Rights Council resolution 16/33, in which the Council requested all Governments to cooperate fully with the Special Rapporteur in the discharge of his mandate, including by providing the information requested.**

96. **The Special Rapporteur notes with appreciation the efforts made by States to counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements. Based on the information received and as evidenced by the horrifying mass murder in Norway on 22 July 2011, challenges remain which require greater efforts and increased political and legal vigilance from States. Extremist political parties, movements and groups continue to pose major challenges,**

especially with regard to the protection of vulnerable groups of individuals against racist and xenophobic crimes, and the protection and consolidation of democracy and human rights in general. It is crucial that a comprehensive approach based on a solid legal framework that also includes key complementary measures be developed, and that it be implemented in an effective, inclusive and cooperative manner with the involvement of relevant actors.

97. **In their replies, many States indicated that acts of racial discrimination and/or incitement to such acts were prohibited by law. As stated in paragraph 13 of the outcome document of the Durban Review Conference,[1] any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should all dissemination of ideas based on racial superiority, hatred or incitement to racial discrimination as well as all acts of violence or incitement to such acts, and those prohibitions are consistent with freedom of opinion and expression. In that regard, the Special Rapporteur calls upon all States to respect the commitments made in the Durban documents. He calls upon States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination to comply fully with their international obligations. According to article 4 of the Convention, States Parties:**

"(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

"(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

"(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination."

98. **In their replies, some States informed the Special Rapporteur that racial motivation was considered to be an aggravating circumstance in their domestic law. The Special Rapporteur welcomes such legislative practices. Where such provision does not exist, the Special Rapporteur urges States to introduce into their domestic criminal law a provision according to which committing an offence with racist or xenophobic motivation or aim constitutes an aggravating circumstance allowing for enhanced penalties to prevent and to address in an effective manner the perpetration of racist or xenophobic crimes by individuals and groups of individuals closely linked to extremist political parties, movements and groups.**

99. **As stated in paragraph 81 of the Durban Declaration,[2] "any form of impunity for crimes motivated by racist and xenophobic attitudes plays a role in weakening the rule of law and democracy and tends to encourage the**

[1] See A/CONF.211/8, chap. I.

[2] See A/CONF.189/12 and Corr.1, chap. I.

recurrence of such acts". States have the responsibility of bringing to justice the perpetrators of crimes with racist or xenophobic motivation and of fighting against impunity. In that context, the Special Rapporteur recommends that States should ensure prompt, thorough and impartial investigation of racist and xenophobic crimes, and ensure that those responsible are adequately sanctioned.

100. The Special Rapporteur urges States to pay due attention to victims of racist crimes, whose rights to life and security of person are violated. States should ensure that all victims of crimes motivated by racist or xenophobic attitudes are made aware of their rights and of existent judicial and non-judicial remedies. States should also ensure the full access of victims of such crimes to effective legal remedies, including the right to seek just and adequate reparation for any damage suffered as a result of such crimes. The Special Rapporteur recommends that States ensure that victims of racist or xenophobic crimes are provided with necessary legal, medical and psychological assistance. He reiterates that States should further engage with vulnerable groups that are at particular risk of racist or xenophobic crimes, reduce their fear, restore confidence in law enforcement officers and allow for better reporting of such crimes.

101. In their replies, many States raised concerns regarding the increased use of the Internet to proliferate, promote and disseminate racist ideas by extremist political parties, movements and groups. The Special Rapporteur notes with concern the aforementioned phenomenon. He would like to reaffirm the positive role that the exercise of the right to freedom of opinion and expression can play in promoting democracy and combating racist and xenophobic ideologies. In this respect, the Special Rapporteur calls on States to implement fully articles 19 to 22 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of expression, assembly and association and determine the limitations thereto. He also encourages States to use new technologies, including the Internet, to promote the values of equality, non-discrimination, diversity and democracy.

102. With regard to data collection, the Special Rapporteur strongly recommends that States collect ethnically disaggregated data on racist and xenophobic crimes and improve the quality of such data-collection systems. The Special Rapporteur is of the view that data on racist and xenophobic crimes can help States to develop effective policies and programmes to tackle crimes motivated by racist or xenophobic attitudes, to assess and monitor the effectiveness of measures taken, and to review existing legislation when necessary. The collection of such data can also help States to identify the types of offences committed and the characteristics of victims and perpetrators, especially if they are affiliated with an extremist political party, movement or group.

103. The Special Rapporteur takes note that some States indicated in their replies that human rights training has been provided to law enforcement officers. He is of the view that law enforcement agents should be provided with the necessary instructions, procedures and resources to identify, investigate and register racist and xenophobic crimes. In this context, the Special Rapporteur recommends that States further strengthen the capacity of law enforcement

agents and members of the judiciary through adequate and mandatory human rights training, with a focus on crimes motivated by racist or xenophobic attitudes.

104. Many States mentioned in their replies that awareness-raising activities have been undertaken to address issues related to practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. In this respect, the Special Rapporteur reiterates that concrete steps should be taken to raise public awareness about the adverse effects of the ideologies and activities of extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements. The Special Rapporteur welcomes the organization of cultural events, festivals, conferences, seminars, competitions, exhibitions, research work and publications, as well as information campaigns and other events, aimed at providing a space for intercultural dialogue and interaction. They can been seen as further positive measures which contribute to the building of a society based on pluralism, tolerance, and respect for cultural diversity, multiculturalism and non-discrimination. The Special Rapporteur emphasizes that education, including human rights education, is a key tool in countering the rise of extremist political parties, movements and groups. Education is undoubtedly the most effective instrument to dismantle pervasive social constructs based on racial differentiation and to create a society based on pluralism, tolerance and respect towards other communities at an early age.

105. Preserving and consolidating democracy is essential to effectively prevent and combat racism, racial discrimination, xenophobia and related intolerance. In this regard, political leaders and political parties must strongly condemn all political messages that disseminate ideas based on racial superiority or hatred, incitement to racial discrimination or xenophobia. Political leaders and political parties should be aware of the moral authority that they bear, promote tolerance and respect, and refrain from forming coalitions with extremist political parties of a racist or xenophobic character. Respect for human rights and freedoms, democracy and the rule of law must always be the cornerstone of any programme or activity developed by political parties, while they bear in mind the need to ensure that the political and legal systems reflect the multicultural character of their societies at all levels.

106. Some States also provided information about their engagement with regional human rights institutions and mechanisms. The Special Rapporteur welcomes and encourages such cooperation at the regional level. Regional human rights mechanisms play a valuable role in the struggle against racism, racial discrimination, xenophobia and related intolerance, as stated in paragraph 119 of the outcome document of the Durban Review Conference.[1]

107. The Special Rapporteur emphasizes that it is crucial to identify and share good practices achieved at the national, regional and international levels to counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements. Efforts made by States should be enhanced through the replication of good practices. In this regard, it is important that the sharing of good practices among all relevant stakeholders be increased. As stated in paragraph 49 of the outcome document of the Durban Review Conference,[1] a broad sharing of best practices

in all regions of the world, aimed at preventing, combating and eradicating racism, racial discrimination, xenophobia and related intolerance, can assist Governments, parliaments, the judiciary, social partners and civil society with the effective implementation of the provisions of the Durban Declaration and Programme of Action.

108. Finally, the Special Rapporteur would like to recall the importance of cooperating closely with civil society and international and regional human rights mechanisms to effectively counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements. The Special Rapporteur emphasizes in particular the important role played by civil society in collecting information, working closely with victims and promoting democratic principles and human rights. The Special Rapporteur also calls upon national human rights institutions to develop appropriate programmes to promote tolerance of, and respect for, all persons and all human rights, and to combat extremism.